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ABSTRACT

This report evaluates the Civil Rights activities of seven federal agencies with fair housing responsibilities. It is the second of a series of six reports to be issued by the Commission on Civil Rights describing the structure, mechanisms, and procedures utilized by the federal departments and agencies in their effort to end discrimination against this nation's minority and female citizens. The purpose of these reports, it is stated, is to offer, after a careful analysis, recommendations for the improvement of those programs which require change. Highlights of the conclusions of this report include the following: it is asserted that the Department of Housing and Urban Development (HUD), the major agency with responsibilities for fair housing, has invested considerable time and resources in dealing with complaints; HUD has failed to conduct sufficient and systematic fair housing reviews of State and local governments, housing authorities, builders and developers, real estate brokers, managers, or lenders; HUD has not adequately monitored compliance agreements or affirmative marketing plans; and, it is held that few significant actions have been taken by the other agencies with fair housing responsibilities to impact on the country's serious problem of housing discrimination. (Author/JM)

THE FEDERAL CIVIL RIGHTS ENFORCEMENT EFFORT--1974

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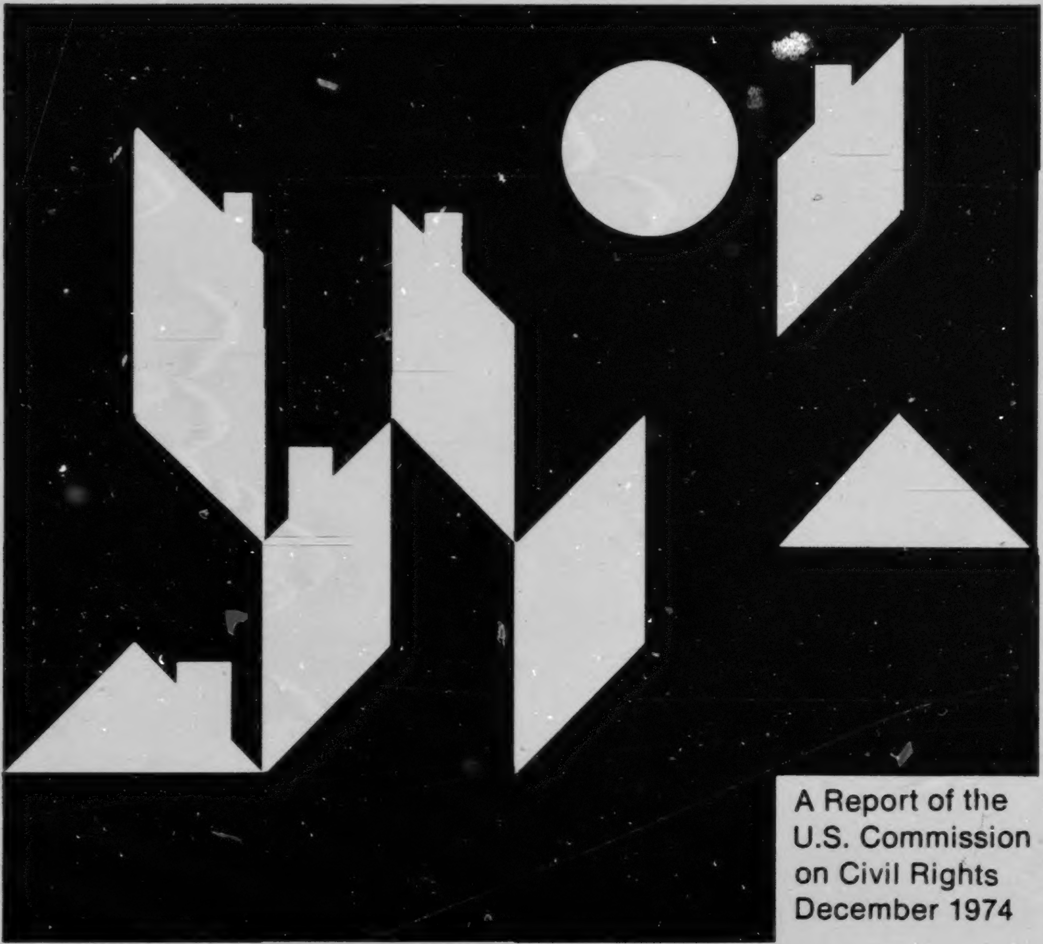
Volume II

To Provide . . . For Fair Housing



A Report of the
U.S. Commission
on Civil Rights
December 1974

UD015318

U.S. Commission on Civil Rights

The U.S. Commission on Civil Rights is a temporary, independent, bipartisan agency established by Congress in 1957 to:

Investigate complaints alleging denial of the right to vote by reason of race, color, religion, sex, or national origin, or by reason of fraudulent practices;

Study and collect information concerning legal developments constituting a denial of equal protection of the laws under the Constitution because of race, color, religion, sex, or national origin, or in the administration of justice;

Appraise Federal laws and policies with respect to the denial of equal protection of the laws because of race, color, religion, sex, or national origin, or in the administration of justice;

Serve as a national clearinghouse for information concerning denials of equal protection of the laws because of race, color, religion, sex, or national origin; and

Submit reports, findings, and recommendations to the President and the Congress.

Members of the Commission:

Arthur S. Flemming, *Chairman*
Stephen Horn, *Vice Chairman*
Frankie M. Freeman
Robert S. Rankin
Manuel Ruiz, Jr.

John A. Buggs, *Staff Director*

THE FEDERAL CIVIL RIGHTS ENFORCEMENT EFFORT--1974

Volume II

To Provide...For Fair Housing

A Report of the
U.S. Commission on
Civil Rights
December 1974

LETTER OF TRANSMITTAL

U.S. COMMISSION ON CIVIL RIGHTS
WASHINGTON, D.C., DECEMBER 1974

THE PRESIDENT
THE PRESIDENT OF THE SENATE
THE SPEAKER OF THE HOUSE OF REPRESENTATIVES

SIRS:

The U.S. Commission on Civil Rights presents this report to you pursuant to Public Law 85-315, as amended.

This report evaluates the civil rights activities of the Federal agencies with fair housing responsibilities: the Department of Housing and Urban Development (HUD); the Federal financial regulatory agencies--the Office of the Comptroller of the Currency (COC), the Federal Deposit Insurance Corporation (FDIC), the Federal Home Loan Bank Board (FHLBB), and the Federal Reserve System (FRS); the Veterans Administration (VA); and the General Services Administration (GSA). It is the second of a series of six reports to be issued by this Commission describing the structure, mechanisms, and procedures utilized by the Federal departments and agencies in their efforts to end discrimination against this Nation's minority and female citizens. This series of publications represents our fourth followup to a September 1970 study of the Federal civil rights enforcement effort.

We have concluded in this report that HUD, the major agency with responsibilities for fair housing, has made a considerable investment of time and resources in dealing with complaints but has failed to conduct sufficient and systematic fair housing reviews of State and local governments, housing authorities, builders and developers, real estate brokers, managers, or lenders. It has not adequately monitored compliance agreements or affirmative marketing plans.

We recommend a Presidential directive that the Secretary of Housing and Urban Development give the enforcement of fair housing provisions a higher departmental priority by establishing as a goal for the next 12 months the conducting of at least 50 comprehensive communitywide compliance reviews of all major institutions in the community which affect the production, sale, and rental of housing; and the adoption of a requirement in connection with all applications for HUD funding, subdivision approval, and mortgage insurance, that affirmative action plans be developed to provide for increased housing opportunities for minorities and women.

We found that a major obstacle to HUD's fair housing program is that under Title VIII of the Civil Rights Act of 1968 HUD has no enforcement authority, and we recommend that Congress amend Title VIII of the Civil Rights Act of 1968 to authorize HUD to issue cease and desist orders to eliminate discriminatory housing practices.

We have also concluded that few significant actions have been taken by the other agencies with fair housing responsibilities to impact on the country's serious problem of housing discrimination. For example, the agencies have not sufficiently informed those who benefit from their programs of the steps they must take to comply with the fair housing law and they have failed to adequately measure compliance with the existing requirements. Further, prior to the 1974 amendment to Title VIII prohibiting sex discrimination in housing, there had been few substantial steps toward combating sex discrimination. We have included specific recommendations in this report concerning each of these agencies.

We urge your consideration of the facts presented and ask for your leadership in ensuring implementation of the recommendations made.

Respectfully,

Arthur S. Flemming, Chairman
Stephen Horn, Vice Chairman
Frankie M. Freeman
Robert S. Rankin
Manuel Ruiz, Jr.

John A. Buggs, Staff Director

PREFACE

In October 1970 the Commission published its first across-the-board evaluation of the Federal Government's effort to end discrimination against American minorities. That report, The Federal Civil Rights Enforcement Effort, was followed by three reports, in May 1971, November 1971, and January 1973, which summarized the civil rights steps taken by the Government since the original report.

At the time we released the last report we indicated that we were conducting another analysis of Federal civil rights programs. This analysis is the Commission's most comprehensive. In order to enable the public to comprehend more fully the diverse parts of our study, we have decided to release each of its six sections independently over the next 7 months. In November 1974, we released Volume I of the Federal Civil Rights Enforcement Effort--1974: To Regulate in the Public Interest. After this second volume on the housing agencies, we will publish reports on Federal civil rights efforts in the areas of education, employment, federally-assisted programs, and policymaking. These reports will cover the activities of not only the most widely known agencies with civil rights responsibilities, such as the Departments of Labor and Health, Education, and Welfare, but also those which have received lesser public attention such as the Office of Management and Budget and the Office of Revenue Sharing of the Department of the Treasury.

This study was begun in November 1972. As we have done with all previous Commission studies of the Federal enforcement effort, detailed questionnaires were sent to agencies, extensive interviewing of

Washington-based civil rights officials took place, and a vast number of documents were reviewed, including laws, regulations, agency handbooks and guidelines, compliance review reports, and books and reports authored by leading civil rights scholars. Volumes of data were also analyzed from sources including the census, agency data banks, complaint investigations, and recipient application forms. For the first time Commission staff also talked to Federal civil rights officials in regional and district offices. Agency representatives were interviewed in Boston, Dallas, New Orleans, San Francisco, Los Angeles, and Chicago.

All of the agencies dealt with at length in our January 1973 report, The Federal Civil Rights Enforcement Effort--A Reassessment, were reviewed in this study with the exception of the Office of Economic Opportunity and the Economic Development Administration of the Department of Commerce. Those agencies had been so reduced in size and authority that we believed our resources could be better utilized by assigning them to monitor other agencies. This study covers some areas not analyzed in the Reassessment report. We will be reporting on the efforts of the White House, the Equal Employment Opportunity Coordinating Council, the Office of Revenue Sharing of the Department of the Treasury, the education program of the Veterans Administration, and the Housing, Education, and Employment Sections of the Civil Rights Division of the Department of Justice.

In addition, this is the first of our studies on Federal enforcement activities to cover the Government's efforts to end discrimination based on sex. The Commission's jurisdiction was expanded to include sex discrimination in October 1972. Information on sex discrimination is an integral part of each section of this study.

These studies of Federal civil rights enforcement efforts, however, are not exhaustive. Limits necessarily have been placed upon them in terms of the laws, agencies, and programs covered. For example, the Voting Rights Act of 1965, which has been treated in previous Commission reports and which will be the subject of a separate Commission publication, was not covered. Further, in the sections dealing with the various Federal programs, it was not possible to treat more than a representative sample. For example, we have only covered the Department of Transportation's assistance for urban mass transit and highways, although that agency also provides aid to airports, railways, and the St. Lawrence Seaway Corporation. In other instances where all or many agencies have responsibilities but one agency is charged with the duty for overall enforcement, we will report only on the activities of the lead agency. This is true in the case of the Civil Service Commission and the Federal equal employment program, and the Office of Federal Contract Compliance of the Department of Labor, and the Executive orders prohibiting discrimination by Federal contractors. Finally, due to restrictions of time and staff resources, there will be variation in the depth of treatment of the various programs and agencies.

To assure the accuracy of these reports, before final action the Commission forwards copies of them in draft form to departments and agencies whose activities are discussed in detail, to obtain their comments and suggestions. Thus far their responses have been helpful, serving to correct factual inaccuracies, clarify points which may not have been sufficiently clear, and provide updated information [illegible] activities undertaken subsequent to Commission staff investigations. These comments have been incorporated in the report. In cases where agencies expressed disagreement with Commission interpretations of fact or with the views of the Commission on the desirability of particular enforcement or compliance activities, their point of view, as well as that of the Commission, has been noted. In their comments, agencies sometimes provided new information not made available to Commission staff during the course of its interviews and investigations. Sometimes, the information was inconsistent with the information provided earlier. Although it was not always possible to evaluate this new information fully or to reconcile it with what was provided earlier, in the interest of assuring that agency compliance and enforcement activities are reported as comprehensively as possible, the new material has been noted in the report.

In the course of preparing these reports, Commission staff interviewed hundreds of Federal workers in the field of equal opportunity and made a large number of demands upon Federal agencies for data and documents. The assistance received was generally excellent. Without it, we would not have been able to publish our views at this time. We further would like to note our belief that many of the Federal employees assigned to duties and responsibilities within the equal opportunity area should be commended for what they have done, considering the legal and policy limitations within which they have been working.

These reports will not deal primarily with the substantive impact of civil rights laws. The Commission will not attempt here to measure precise gains made by minority group members and women as a result of civil rights actions of the Federal Government. This will be the subject of other Commission studies. Rather, we will attempt to determine how well the Federal Government has done its civil rights enforcement job--to evaluate for the period of time between July 1972 and June 1974 the activities of a number of Federal agencies with important civil rights responsibilities.

The purpose of these reports is to offer, after a careful analysis, recommendations for the improvement of those programs which require change. The Commission's efforts in this regard will not end with this series of reports. We will continue to issue periodic evaluations of Federal enforcement activities designed to end discrimination until such efforts are totally satisfactory.

Acknowledgments

The Commission is indebted to the following staff members and former staff members: Grace M. Buckley, José S. Garza, Peggy Ann Hubble, Karen J. Krueger, Nancy Langworthy, and David M. Strauss, who wrote this report, under the direction of Cynthia Norris Craae, Associate Director, Office of Federal Civil Rights Evaluation.

The report was prepared under the overall supervision of Jeffrey M. Miller, Director, Office of Federal Civil Rights Evaluation. The following staff members and former staff members provided support in the preparation of this report: Raymundo Alemán, Patricia A. Alicea, Randall D. Briggs, Alice R. Burruss, Patricia A. Cheatham, Josie Gonzales, Wallace Greene, Michele A. Macon, Grenda L. Morris, Bruce E. Newman, Penny K. Smith, Patsy L. Washington, Brenda A. Watts, and Rita L. Young.

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Chapter 1

Department of Housing and Urban Development (HUD)

I. Program and Civil Rights Responsibilities

The Department of Housing and Urban Development is the major Federal agency with responsibilities for improving housing conditions in this country. It does so by providing assistance to citizens, developers, and public and private nonprofit housing agencies in the financing and production of new housing, preservation of available housing, leasing of housing, and improvement of substandard housing.[1] In addition, HUD bears the primary responsibility for Federal efforts in the development of the Nation's communities.[2] Further, HUD provides planning grant assistance to State and local governments and areawide multijurisdictional organizations. The bulk of HUD's assistance can be categorized in four major areas:[3] community development and planning,

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1. In fiscal year 1973, HUD's appropriation for assisted housing was $1.8 billion.

2. Its fiscal year 1973 community planning and development appropriation was $2.47 billion.

3. Under its community development programs HUD provides comprehensive planning assistance to encourage the improvement of effective planning, decisionmaking, and management capability. In fiscal year 1972 over 1,500 State and local governments, areawide multijurisdictional organizations, and Indian reservations were recipients or subrecipients of such assistance. HUD also guarantees loans for the development of new communities. By fiscal year 1973, HUD had made commitments for almost $300 million toward the development of 15 new communities.

housing production and mortgage credit,[4] housing management,[5] and policy development and research.[6] The Housing and Community Development Act of 1974[7] radically alters the means of providing housing for low- and moderate-income families, providing much greater local discretion as to how funds for housing and community development will be spent.[8]

HUD's most significant duties regarding equal opportunity in housing and urban development are the enforcement of Title VIII of the Civil Rights Act of 1968,[9] Title VI of the Civil Rights Act of 1964,[10] and

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[4] Under its housing production and mortgage credit programs, HUD provides subsidies for new and rehabilitated housing for low-income families. This includes supplements for low-income families, mortgage assistance, rental assistance, and subsidized loans for rural borrowers. In addicion, HUD operates a large unsubsidized housing program, similar to the guaranteed housing program at the Veterans Administration (See Chapter 3 , Veterans Administration, Section IV infra.) Under this unsubsidized program, HUD provides mortgage insurance for the purchase of homes, in general, and for specialized purposes including mobile homes, homes outside urban renewal areas, and homes for disaster victims. As part of the program, HUD provides subdivision approval to builders and developers, and arranges for the appraisal of homes which may be purchased with FHA-insured loans. HUD's approvals and appraisals provide a service to builders and developers, making it easier for them to obtain commercial financing of their construction. In exchange for this assistance, HUD requires builders and developers to submit affirmative marketing plans. See Section IV A, p. 76 infra.

[5] Under its housing management programs, HUD provides assistance to local housing authorities for management and modernization of low-rent public housing projects. HUD assistance may be used for such purposes as acquiring existing housing from the private market and constructing new facilities. In May 1974, HUD was providing assistance to about 2,500 agencies. Telephone interview with Daniel Day, Public Information Officer, Office of Public Affairs, HUD, May 16, 1974.

[6] Under its policy development and research programs HUD provides funds for research relating to such matters as national housing need, evaluation of existing housing and community development programs, and improving the environment. In 1973, 243 contracts and 13 grants were funded.

[7] The Housing and Community Development Act of 1974, Pub. L. 93-383 (Aug. 22, 1974).

[8] This report covers HUD activities through late May 1974. Therefore, it does not cover the Housing and Community Development Act of 1974, which was passed on August 22.

[9] Title VIII of the Civil Rights Act of 1968, 42 U.S.C. 3601 et seq. (1970).

[10] Title VI of the Civil Rights Act of 1964, 42 U.S.C. §2000d. (1970).

Executive Order 11063.[11] Title VIII prohibits discrimination in the sale and rental of most housing[12] because of race, color, religion, or national origin. The Housing and Community Development Act of 1974 amended Title VIII to include a prohibition against sex discrimination.[13] Title VIII makes it unlawful to discriminate in advertising the sale or rental of housing, the financing of housing, or in the provision of real estate brokerage services.[14] HUD is responsible for overall administration of this title, and it is specifically charged with investigating complaints of discrimination.

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[11] 3 C.F.R. § 652 (1962). Other major areas of civil rights responsibility are equal employment opportunity (see U.S. Commission on Civil Rights, The Federal Civil Rights Enforcement Effort - 1974 - Employment), contract compliance, (Id. at ch. 3) and minority entrepreneurship.

[12] It is estimated that more than 80 percent of the Nation's housing is covered by Title VIII. Exempted from Title VIII are single family homes sold or rented without the use of a broker and without discriminatory advertising, rooms or units in dwellings containing living quarters for no more than four families provided that the owner lives in one of them and does not advertise or use a broker, and rooms in private clubs not open to the public. Title VIII's prohibition against religious discrimination does not extend to the sale or rental of dwellings owned or operated by a religious organization for a non-commercial purpose.

[13] This amendment provides that the word "sex" be inserted after the word "religion" each time it appears in Title VIII. Monies for staff to implement operations based on sex discrimination have been requested by HUD. Speech by Dr. Gloria E.A. Toote, Assistant Secretary for Equal Opportunity, Equal Opportunity Meeting, HUD Central Office, Washington, D.C., Oct. 24, 1974. The amendment does not provide HUD with any enforcement powers for Title VIII, nor does it give HUD additional authority to coordinate the implementation of Title VIII by other Federal agencies. Section 109 of the Housing and Community Development Act of 1974 also prohibits discrimination on the basis of race, color, national origin, or sex under community development programs, and gives the Secretary authority to apply sanctions for violations, similar to those provided by Title VI of the Civil Rights Act of 1964. Section 808(a) of the act amends Title V of the National Housing Act to prohibit discrimination on account of sex in the extension of Federal mortgage assistance. It also stated that the combined income of both husband and wife must be considered for the purpose of extending credit to a married couple or either member of the couple. The sex discrimination amendment to Title VIII was supported by the HUD Equal Opportunity Office. HUD also actively supported a bill to amend the Truth in Lending Act (15 U.S.C. §1631 et seq.)to prohibit discrimination based on sex or marital status. The bill would make it unlawful for a creditor to discriminate on the basis of sex or marital status when granting credit in connection with any consumer credit sale. Section 1605, 93d Cong., 1st Sess. (1973). Consumer credit sales include such transactions as mortgage loans, automobile loans, department store credit plans, and local and national credit cards. As of October 1, 1974, that bill had not been passed.

HUD is significantly hampered in its power to require compliance with Title VIII because if it finds discrimination, it can use only informal methods of conference, conciliation, and persuasion[15] to bring about compliance. If these methods fail, it can merely refer the matter to the Department of Justice; it has no authority to issue cease and desist orders, nor does it have the power to institute litigation against parties it has found discriminating.

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14. An additional tool in the struggle against housing discrimination has been provided by the Civil Rights Act of 1866. On September 2, 1965, Joseph Lee Jones, a black, filed a complaint in the District Court for the Eastern District of Missouri alleging that the Alfred H. Mayer Company had refused to sell him a home solely because of his race. Mr. Jones sought injunctive relief by relying in part upon section 1982 of Title 42, United States Code, originally part of the Civil Rights Act of 1866. This section of the act provides that "All citizens of the United States shall have the same right, in every State and Territory as is enjoyed by white citizens thereof to inherit, purchase, lease, sell, hold, and convey real and personal property."

The District Court ruled in favor of the Mayer Company and dismissed the complaint. The Court of Appeals for the Eight District affirmed the District Court's ruling, concluding that section 1982 applied only to State action and did not reach private refusals to sell. The U.S. Supreme Court granted certiorari and reversed the judgment of the Court of Appeals. The Court ruled that section 1982 of the act "bars all racial discrimination, private as well as public, in the sale or rental of property, and the statute, thus construed, is a valid exercise of the power of Congress to enforce the Thirteenth Amendment." Jones v. Alfred H. Mayer Co., 392 U.S. 409 (1968). This ruling did not specifically assign any responsibilities to HUD. HUD, however, has encouraged private attorneys to file suits under the 1866 civil rights statute. See Section V A, p. 109 infra.

15. Section 810 of the Civil Rights Act of 1968, 42 U.S.C. § 3610 (1970).

Title VIII also requires HUD, as well as other Federal executive departments and agencies, to administer its programs and activities relating to housing and urban development in a manner that affirmatively furthers the purpose of the law. In addition, Title VIII requires HUD to make studies, publish reports, and cooperate with other governmental and private organizations to help eliminate discriminatory housing practices.[16]

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16. Section 808(e) of Title VIII states:

> The Secretary of Housing and Urban Development shall -- (1) make studies with respect to the nature and extent of discriminatory housing practices in representative communities, urban, suburban, and rural throughout the United States; (2) publish and disseminate reports, recommendations, and information derived from such studies; (3) cooperate with and render technical assistance to Federal, State, local, and other public or private agencies, organizations, and institutions which are formulating or carrying on programs to prevent or eliminate discriminatory housing practices; (4) cooperate with and render such technical and other assistance to the Community Relations Service as may be appropriate to further its activities in preventing or eliminating discriminatory housing practices; and (5) administer the programs and activities relating to housing and urban development in a manner affirmatively to further the policies of this title.

Section 809 specifies the following:

> Immediately after the enactment of this title the Secretary shall commence such educational and conciliatory activities as in his judgment will further the purposes of this title. He shall call conferences of persons in the housing industry and other interested parties to acquaint them with the provisions of this title and his suggested means of implementing it, and shall endeavor with their advice to work out programs of voluntary compliance and of enforcement.... He shall consult with State and local officials and other interested parties to learn the extent, if any, to which housing discrimination exists in their State or locality, and whether and how State or local enforcement programs might be utilized to combat such discrimination in connection with or in place of, the Secretary's enforcement of this title. The Secretary shall issue reports on such conferences and consultations as he deems appropriate.

Title VI of the Civil Rights Act of 1964 prohibits discrimination on the grounds of race, color, and national origin by recipients of Federal assistance.[17] HUD has a duty to ensure compliance with Title VI by its recipients and can withhold or withdraw funds from offenders. Executive order, 11063, issued in 1962, requires nondiscrimination in the sale and rental of federally-subsidized and insured housing. Under the Executive order, HUD has the power to defer or retract funds from offenders, or cancel contracts with parties found in noncompliance.

Although the numerous civil rights laws would indicate that this country is dedicated to the concept of equality, segregated housing continues to be a major problem.[18] Beyond the fact that most housing discrimination based on race, ethnic origin, and sex is illegal, there are disastrous consequences for the people who are forced to live under segregated housing conditions. Too often segregation has resulted in overcrowding; concomitantly, it produces unhealthy and unsafe living

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17. Title VI requires HUD to ensure nondiscrimination not only in HUD-assisted housing but in all HUD programs including those for community development and comprehensive planning. For example, HUD must make certain that minorities are not excluded from the water and sewer programs it funds. The scope of this report, however, is limited to fair housing.

18. See A. Sørensen, K.E. Taeuber, and L.J. Hollingsworth, Jr., Indexes of Racial Residential Segregation for 109 Cities in the United States 1940 to 1970 (1974); E. Grier and G. Grier, "Equality and Beyond: Housing Segregation in the Great Society," in N.R. Yetman and C. Steele, Majority and Minority: the Dynamics of Racial and Ethnic Relations 453 (1971). See also M. Rafferty, Bias in Newspaper and Real Estate Advertising: A Re-Survey (1970).

conditions.[19] Frequently, segregated housing patterns have brought with them substandard education and inadequate public services.[20] Segregation in housing also causes severe humiliation to the people who are segregated and often contributes to physical and psychological illness.[21]

A variety of tools have been used by the white majority to perpetuate residential segregation. Fiscal zoning, used to attract industry and commercial establishments which will provide large property taxes, may also be used to prohibit low- and moderate-income housing. Large lot zoning limits housing construction to single family homes on lots of 1, 2, 3, or even 4 acres, effectively excluding persons, often minorities and female heads of households, who cannot afford to purchase large lots. Minimum house size requirements, too, place a lower limit on the square footage of houses to be constructed, raising the cost of housing which can be built in a particular area, and again excluding the poor who are often minorities and female heads of households.[22] Blackbusting is the technique used by real estate speculators which accelerates the sale of housing by circulating rumors that unwelcome minorities have purchased or rented houses in the neighborhood and will soon overwhelm it. The blockbuster's objective is to precipitate a drop in prices which will enable him or her to purchase the properties and resell them to minority families at inflated prices.[23]

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[19] See V. Countryman, Discrimination and the Law (1965) and Maryland State Advisory Committee to U.S. Commission on Civil Rights, A Crisis in Housing on the Upper Eastern Shore (1971). According to the 1970 census, 34.2 percent of overcrowded housing is occupied by minorities, although minorities occupy only 14.4 percent of all housing. Blacks occupy 21.2 percent of overcrowded housing, and only 9.8 percent of all housing; persons of Spanish speaking background occupy 10.7 percent of overcrowded housing, as compared with 3.6 percent of all housing. Native Americans occupy 1.0 percent of overcrowded housing and only 0.6 percent of all housing; Asian Americans occupy 1.3 percent of overcrowded housing and only 0.3 percent of all housing. The 1970 census also shows that minority-occupied housing more frequently than nonminority-occupied households lacks hot water, or baths, or toilets for the exclusive use of the household.

[20] Discrimination and the Law, supra note 19.

[21] For example, studies have shown that the incidence of illness and disability is markedly reduced when housing conditions are improved. D.M. Wilner and R.P. Walkey, "Effects of Housing on Health and Performance," in L.J. Duhl, The Urban Condition: People and Policy in the Metropolis 244 (1963). Segregated and substandard housing contributes to family disorganization and breakdown, National Advisory Commission on Civil Disorders, "Unemployment, Family Structure, and Social Disorganization" in F.R. Lapides and D. Burrows, Racism: A Casebook 121-141 (1971).

Redlining, a tool used by the home finance industry to discriminate against minorities, is the refusal to make housing loans to anyone within a certain area of a city, most frequently a minority area. In another variation of redlining, home finance agencies refuse to extend credit

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22. See E. M. Bergman, Eliminating Exclusionary Zoning: Reconciling Workplace and Residence in Suburban Areas (1974) and Maryland State Advisory Committee to U.S. Commission on Civil Rights, The Zoning and Planning Process in Baltimore County and its Effect on Minority Group Residents (1971).

23. C. Abrams, The Language of Cities 25 (1971).

to minorities for the purchase of housing outside of segregated areas.[24]

Although persons of Spanish speaking background, Asian Americans, American Indians, and blacks have all been subjected to segregation in housing, the factors which have led to segregation often differ for these groups. For example, poverty, a distinct language, and distinct cultural traits have led to discrimination against and segregation of persons of Spanish speaking background.[25] Visible racial characteristics and low incomes have contributed most heavily to the segregation of blacks.[26] Cultural traits and racial distinction have contributed to the segregation of Asian Americans. Moreover, Federal, State, and local anti-Oriental legislation, effectively announcing that Asian Americans were unwelcome in this country, has contributed to discrimination against Asian Americans.[27] American Indians are often effectively confined to housing on reservations which is among the poorest housing in the Nation. Moreover, those Native Americans who live in cities live in some of the most squalid urban neighborhoods.[28]

Neither Title VI nor Executive Order 11063 prohibits housing discrimination based on sex or marital status. Although such discrimination is widespread[29] and in some cases inseparable from racial and ethnic discrimination,[30] prior to the passage of the Housing and Community Development Act of 1974,[31] HUD referred housing complaints based on sex or marital status to organizations which may have been able to provide assistance,[32] including State agencies in jurisdictions which prohibit sex-based housing discrimination.[33]

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[24] L. Freedman, Public Housing: The Politics of Poverty 135 (1969) and E. Grier and G. Grier, supra note 18.

[25] C.F. Marden and G. Meyer, Minorities in American Society 308-311 (1973). See Pennsylvania State Advisory Committee to U.S. Commission on Civil Rights, In Search of a Better Life (1974) for a discussion of the housing problems facing Puerto Ricans in Philadelphia.

[26] D. McEntire, Residence and Race 68-71 (1960).

[27] See Minorities in American Society, supra note 25, at 367-376, and 383-384.

[28] W.A. Brophy and S.D. Aberle, The Indian: America's Unfinished Business 166-70 (1972).

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[29] Some common forms of sex discrimination include refusal to lend to a wife in her own name, refusal to count a working wife's income when the couple applies for a loan, investigation of the wife's birth control practices in connection with a mortgage loan application, the difficulty which widows and divorced women encounter in seeking to obtain mortgages in the absence of a credit record (which such women do not have since they were denied credit in their own names when married), application of different standards to applications of single women than to applications of single men, and requiring cosigners for single women, but not for single men. Additionally, landlords often discriminate against single persons, regardless of sex, preferring married couples as tenants. See testimony on Availability of Credit to Women, at Hearings Before the National Commission on Consumer Finance, Washington, D.C., May 22-23, 1972; Federal Deposit Insurance Corporation, Proposed Fair Housing Lending Practices Regulations, Hearing Before the Federal Deposit Insurance Corporation, Dec. 19 and 20, 1972; District of Columbia Commission on the Status of Women, Report on Mortgage Lending Practices (1973); and William L. Taylor, Director, Center for National Policy Review, Statement on Discriminatory Treatment of Women in Home Mortgage Financing before the Joint Economic Committee of Congress, July 12, 1973.

[30] For example, refusal to rent or sell to female heads of families places a great hardship on all women, but has a greater impact on minority women. In 1972 only 9.4 percent of all nonminority families were headed by women. In contrast, 30.1 percent of all minority families were headed by women. U.S. Bureau of the Census, Current Population Reports, Series P-20, Nos. 153 and 218, and unpublished data, reported in U.S. Department of Labor, Statistical Abstract 40 (1973).

Moreover, discrimination on the basis of sex may result in racial or ethnic discrimination, as a larger proportion of minority group families rely on the wife's income to afford housing and other necessities. To illustrate, in 1971, 60.0 percent of all black mothers worked as opposed to only 29.2 percent of all mothers. Id. at 340. (The Bureau of the Census does not publish data on the number of families with incomes from both husband and wife.) This relationship between sex and race or ethnic discrimination is acknowledged by the Federal Home Loan Bank Board in its guidelines prohibiting regulated institutions from discriminating by sex in mortgage lending. 7 C.F.R. § 531.8(c)(1) (1974).

[31] As indicated in note 8 supra, this report does not cover HUD's activity after the passage of that act.

The National Housing Act prohibits discrimination against families with children in the rental of Federal Housing Administration (FHA)-insured housing units.[34] Thus, if a complaint alleging discrimination based on sex or marital status also involved the related issue of children and federally-subsidized rental units, e.g., the refusal to rent to a person because of the number of children in the family, the complaint is referred to the appropriate HUD area or insuring office.

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[32] HUD's Office of the Assistant Secretary for Equal Opportunity stated:

> Prior to August 22, 1974, the date on which the Housing and Community Development Act was signed by the President, the Office of Equal Opportunity referred housing discrimination complaints based on "sex" to agencies and organizations which may have been able to provide assistance inasmuch as this office did not have the authority to process such complaints. Attachment to a letter from Dr. Gloria E. A. Toote, Assistant Secretary for Equal Opportunity, Department of Housing and Urban Development, to John A. Buggs, Staff Director, U.S. Commission on Civil Rights, Nov. 6, 1974.

[33] The District of Columbia, Maryland, and several other States have passed laws which prohibit discrimination in mortgage lending on the basis of sex or marital status. The District's prohibition is part of a comprehensive law prohibiting discrimination in public accomodations, housing, and credit. The Maryland law is narrow, and is restricted to credit. As of May 1974 neither law had yet been codified.

[34] Section 207(b) of the National Housing Act provides:

> Notwithstanding any other provisions of this section (Rental Housing Insurance), no mortgage shall be insured hereunder unless the mortgager certifies under oath in selecting tenants for the property covered by the mortgage he will not discriminate against any family by reason of the fact there are children in the family, and that he will not sell the property while the insurance is in effect unless the purchaser so certifies such certification to be filed with the Secretary. Violations of any such certification shall be a misdemeanor punishable by a fine of not to exceed $500.

Basically, however, until the passage of the Housing and Community Development Act of 1974,[35] HUD took little action to eliminate housing discrimination based on sex or marital status. It had not conducted studies, held hearings, or gathered any data to assess its type or extent.[36] Overall, HUD is one of the Federal agencies which has failed to respond to the opportunity to provide leadership in the area of housing discrimination based on sex.[37]

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[35] HUD's Office of Assistant Secretary for Equal Opportunity recently stated, "this office has always supported the amendment of a provision to Title VIII, prohibiting discrimination in housing on the basis of sex." November 1974 Toote letter, *supra* note 32.

[36] In May 1974 HUD held an administrative meeting on mortgage finance. The overall purpose of this meeting was to gather information regarding all types of discrimination in the financing of housing, not merely sex discrimination. Nonetheless, some information which came to the attention of HUD dealt with discrimination in the financing of housing on the basis of sex. *Id.*

HUD has appointed a Women's Coordinator with authority to review the impact of HUD programs on women and to assess the need for measures to prevent discrimination in housing based on sex or marital status. This person, however, concentrates almost exclusively upon eliminating sex discrimination in HUD employment.[38]

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[37] HUD's inaction contrasts with the actions of many other Federal agencies without explicit authority for prohibiting sex discrimination. For example, the Secretary of Labor issued an order prohibiting discrimination on the basis of sex in programs operated by or financed through the Manpower Administration. Secretary's Order 16-66, Compliance Officer's Handbook, Department of Labor, January 1972, at 17 and 18. The Secretary of Agriculture has prohibited sex discrimination in all of the Department of Agriculture's direct assistance programs 7 C.F.R. § 15.51(b) (1974). In February 1971, the Secretary of Health, Education, and Welfare established a Women's Action Program to conduct a departmental analysis to enable HEW to assure that its programs would operate to minimize discrimination against women and to review HEW employment practices with regard to women. Memorandum from Elliot Richardson, Secretary of Health, Education, and Welfare, to the HEW Undersecretary, Assistant Secretaries and Agency Heads. "Women's Action Program," Feb. 17, 1971. See also Department of Health, Education, and Welfare, Report of the Women's Action Program, January 1972.

[38] Interview with Diane Sterenbuch, Acting Women's Coordinator, Office of Equal Opportunity, HUD, Apr. 22, 1974. This person has received no pressure from HUD to expand her efforts beyond HUD employment to an analysis of HUD programs.

II. Organization and Staffing

A. Washington Office

The Assistant Secretary for Equal Opportunity[39] oversees all matters relating to civil rights and equal opportunity in housing and related facilities[40] as shown in Organizational Chart I on page 15. In fiscal year 1973, there were 427 positions in the Equal Opportunity Offices in HUD's central and field offices, an increase of 80 positions since fiscal year 1972.[41] HUD officials have stated that HUD's fair housing program is understaffed.[42]

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[39] Since June 21, 1973, this position has been held by Dr. Gloria E. A. Toote.

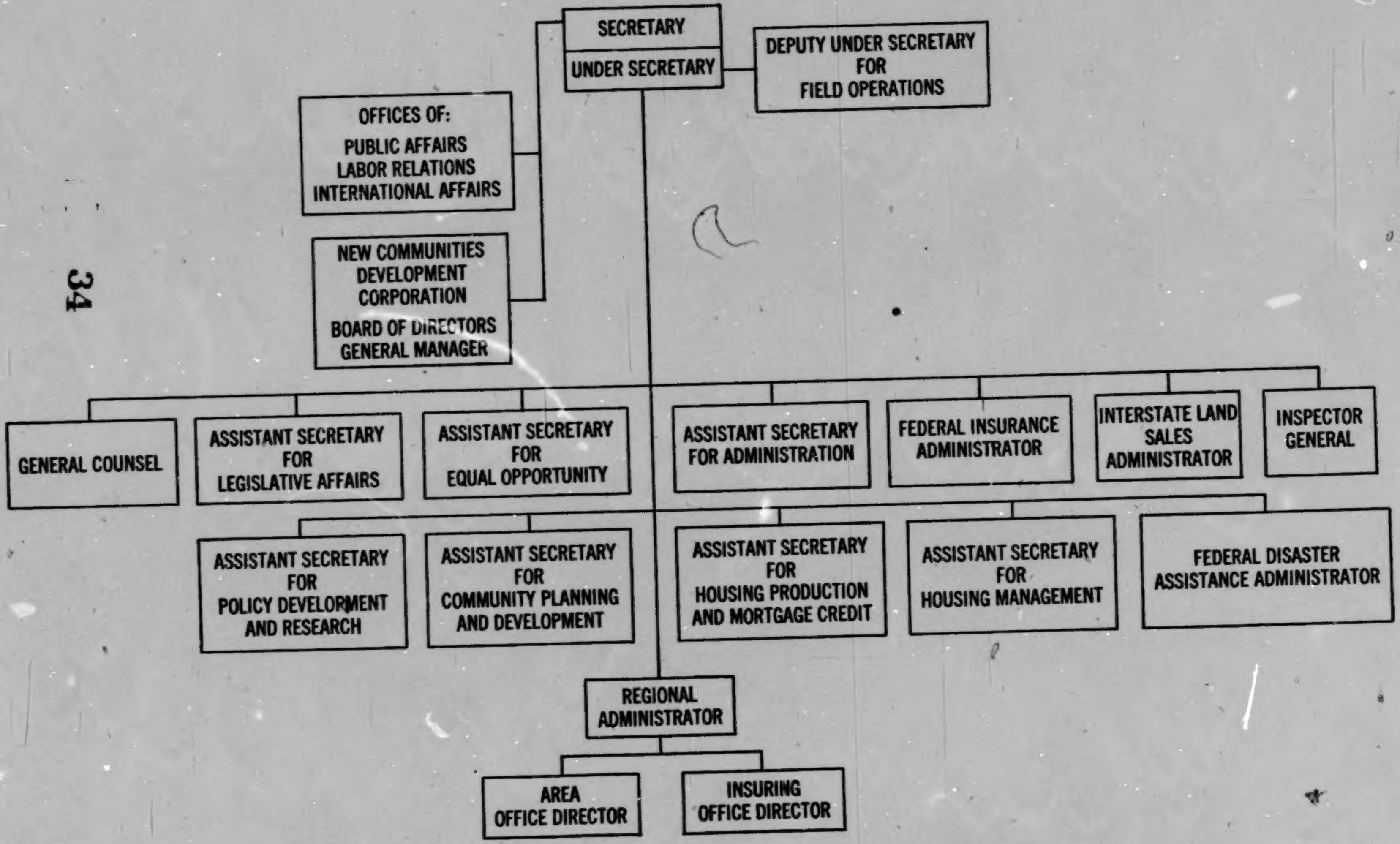
[40] In addition to responsibilities under Titles VIII and VI and Executive Order 11063, the Office of the Assistant Secretary for Equal Opportunity is responsible for internal equal employment opportunity, contract compliance, and minority entrepreneurship. About 44 percent of HUD's equal opportunity staff's time is spent on these latter three activities, with this time being allotted as follows: 4 percent on internal equal opportunity, 27 percent on contract compliance, and 13 percent on minority entrepreneurship. Interview with Kenneth Holbert, Office of Civil Rights Compliance and Enforcement, HUD, June 4, 1974.

[41] U.S. Commission on Civil Rights, The Federal Civil Rights Enforcement Effort--A Reassessment 129, 130 (1973).

[42] Interviews with John Thompson, Director, HUD Area Equal Opportunity Office, Chicago, Ill., in Chicago, May 16, 1973; Joseph Vera, Assistant Regional Administrator for Equal Opportunity, HUD, Boston, Mass., in Boston, Nov. 13, 1972; and A. Maceo Smith, Assistant Regional Administrator for Equal Opportunity, HUD, Fort Worth, Tex., in Fort Worth, Jan. 30, 1973.

ORGANIZATIONAL CHART I

Department of Housing and Urban Development
Central Office


SECRETARY
UNDER SECRETARY
DEPUTY UNDER SECRETARY FOR FIELD OPERATIONS
OFFICES OF: PUBLIC AFFAIRS LABOR RELATIONS INTERNATIONAL AFFAIRS
NEW COMMUNITIES DEVELOPMENT CORPORATION BOARD OF DIRECTORS GENERAL MANAGER
GENERAL COUNSEL
ASSISTANT SECRETARY FOR LEGISLATIVE AFFAIRS
ASSISTANT SECRETARY FOR EQUAL OPPORTUNITY
ASSISTANT SECRETARY FOR ADMINISTRATION
FEDERAL INSURANCE ADMINISTRATOR
INTERSTATE LAND SALES ADMINISTRATOR
INSPECTOR GENERAL
ASSISTANT SECRETARY FOR POLICY DEVELOPMENT AND RESEARCH
ASSISTANT SECRETARY FOR COMMUNITY PLANNING AND DEVELOPMENT
ASSISTANT SECRETARY FOR HOUSING PRODUCTION AND MORTGAGE CREDIT
ASSISTANT SECRETARY FOR HOUSING MANAGEMENT
FEDERAL DISASTER ASSISTANCE ADMINISTRATOR
REGIONAL ADMINISTRATOR
AREA OFFICE DIRECTOR
INSURING OFFICE DIRECTOR

It is the central office of the Assistant Secretary[43] which is responsible for the development of policy, regulations, instructions, and for general oversight of all equal opportunity divisions in the field offices.[44] The Assistant Secretary's personal staff of 13 includes coordinators of activities related to the needs of women, the Spanish speaking, and American Indians.[45] In addition, there are four offices within the Office of

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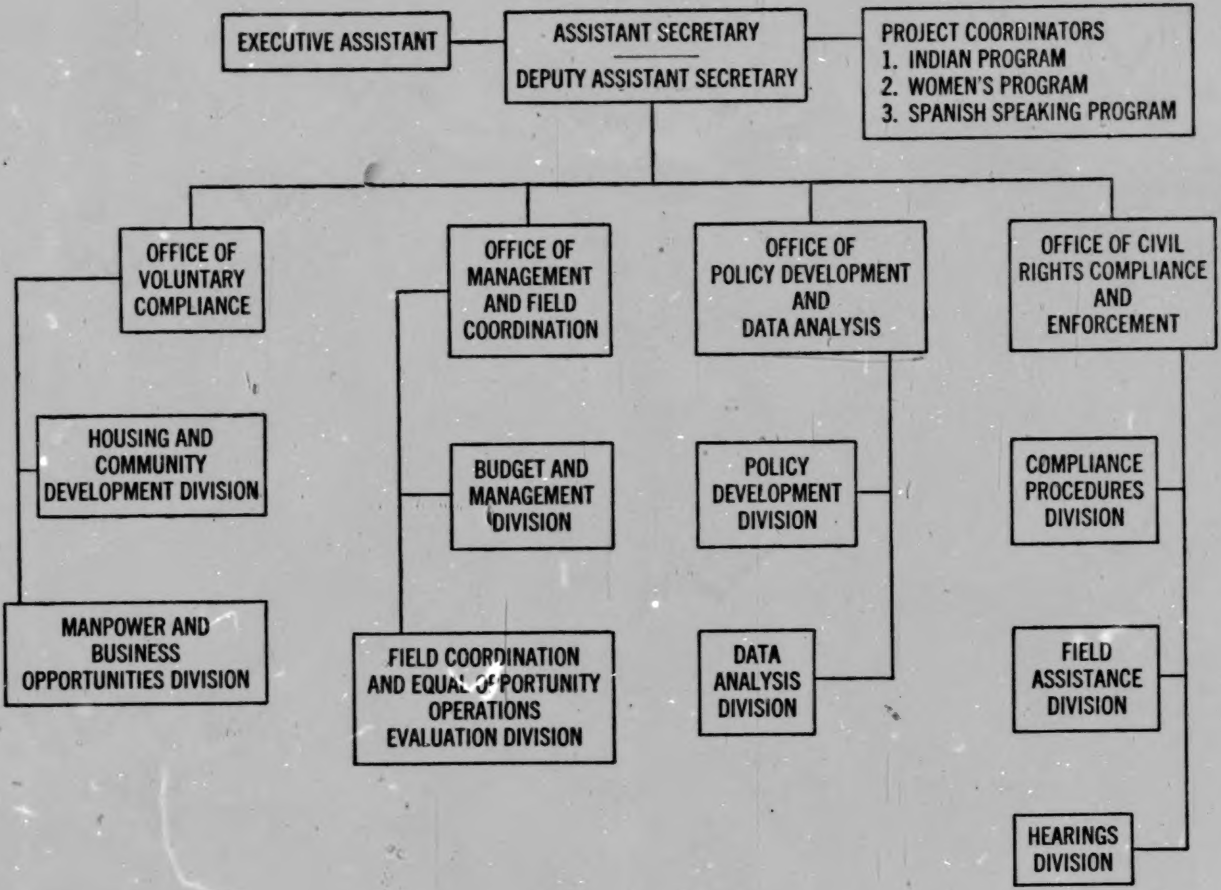
[43] See Organizational Chart II, on p. 17.

[44] Although the policy directives guiding these units are generated by the Washington Equal Opportunity Office, the equal opportunity field staff report to the directors of the field offices.

[45] The coordinators act as liaison and troubleshooters for the group they represent. They work to assure that their groups have an opportunity to participate in all applicable HUD programs. HUD requires that the coordinators participate in interagency panel discussions, meetings and conferences to review the objectives of its research programs as they relate to the specific needs of these groups.

ORGANIZATIONAL CHART II

Department of Housing and Urban Development
Assistant Secretary for Equal Opportunity


EXECUTIVE ASSISTANT
ASSISTANT SECRETARY
DEPUTY ASSISTANT SECRETARY
PROJECT COORDINATORS
1. INDIAN PROGRAM
2. WOMEN'S PROGRAM
3. SPANISH SPEAKING PROGRAM
OFFICE OF VOLUNTARY COMPLIANCE
OFFICE OF MANAGEMENT AND FIELD COORDINATION
OFFICE OF POLICY DEVELOPMENT AND DATA ANALYSIS
OFFICE OF CIVIL RIGHTS COMPLIANCE AND ENFORCEMENT
HOUSING AND COMMUNITY DEVELOPMENT DIVISION
MANPOWER AND BUSINESS OPPORTUNITIES DIVISION
BUDGET AND MANAGEMENT DIVISION
FIELD COORDINATION AND EQUAL OPPORTUNITY OPERATIONS EVALUATION DIVISION
POLICY DEVELOPMENT DIVISION
DATA ANALYSIS DIVISION
COMPLIANCE PROCEDURES DIVISION
FIELD ASSISTANCE DIVISION
HEARINGS DIVISION

the Assistant Secretary for Equal Opportunity, each responsible to the Assistant Secretary and her personal staff.[46]

The first office, Civil Rights Compliance and Enforcement, has a staff of 21.[47] It is responsible for designing and evaluating HUD's compliance program. It drafts regulations and provides support and guidance to regional equal opportunity staff in conducting compliance reviews and complaint investigations. For example, the Office of Civil Rights Compliance and Enforcement drafted new regulations for complaint and compliance activities under Executive Order 11063. In addition, in the spring of 1973, this office drafted a regulation assigning responsibility for negotiating with respondents in Title VI cases to the regional equal opportunity staff.[48] Further, in mid-1972 this office initiated action to deal more effectively with Title VI compliance by establishing priorities for Title VI compliance activities in the regions.[49]

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[46] See Organizational Chart II, p. 17. These four offices were created by a reorganization of the HUD equal opportunity program in April 1972. This reorganization was extensively discussed in The Federal Civil Rights Enforcement Effort--A Reassessment, supra note 41.

[47] The staffing information in this report is supplied as of August 1973. HUD Response to the Commission's April 1973 questionnaire contained a letter from James T. Lynn, Secretary of Housing and Urban Development, to Stephen Horn, Vice Chairman, U.S. Commission on Civil Rights, Aug. 9, 1973 /hereinafter referred to as HUD response/.

[48] For more information on the regulations see Section III, p. 65 infra.

The second office, Voluntary Compliance, with a staff of 13, was created to conduct efforts such as the development of broad scale affirmative action plans to promote equal housing opportunity activity by State and local agencies and all sections of the real estate industry. Most of the activities undertaken by this office had not involved the field offices until the summer of 1973. At that time, it was in the process, however, of developing a handbook for field staff on voluntary compliance. This office has since encouraged and prepared the field offices to conduct voluntary compliance activities by sending them a monthly informal memorandum with suggestions for possible voluntary compliance activities. A further effort to encourage activities by the field offices has been for Voluntary Compliance staff to participate in "counterpart meetings," i.e., meetings where area and insuring office equal opportunity staff train and work with program staff in enforcement of equal opportunity program standards. At these meetings, Voluntary Compliance staff explain and stress the importance of working with the private real estate industry to obtain cooperation and compliance with regulations such as affirmative marketing.[50]

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[49] For more information see Section III, p. 59 infra. HUD recently stated:

> With respect to the Title VI program, we have an operating unit, created as a means of improving our Title VI Enforcement performance. This office will also be responsible for melding HUD's Title VI efforts with the enforcement of section 109 of the Housing and Community Development Act of 1974: the nondiscrimination section. Section 109 is broader than Title VI in that it covers sex discrimination and employment practices of recipients who receive community development block grants under Title I of the new Act.
>
> The new office has already advised Regions of goals for FY 1975 concerning an increase in the number of compliance reviews initiated (20% above FY 1974) and a decrease in the number of open Title VI complaints (20% below 6/30/74 by 6/30/75). November 1974 Toote letter, supra note 32.

The third office, Management and Field Coordination, with a staff of 17, is responsible for providing training and technical assistance to HUD's program and equal opportunity staffs in the field. It also provides training for the Washington equal opportunity staff.

The fourth office, Program Standards and Data Analysis,[51] with a staff of 13, was created to develop program standards[52] and for systematizing the collection and use of racial and ethnic data. In implementing its mandate this office in the spring of 1973 worked with program staff so that the regulations and handbooks published by the Assistant Secretary for Community Planning and Development pursuant to Section 701, "Comprehensive Planning Assistance," of the Housing Act of 1954[53] would properly represent equal opportunity considerations. It also reviews and comments on the field office evaluations conducted by the Office of Management and Field Coordination. In addition, staff from the Office of Program Standards and Data Analysis have spent considerable time in the field providing technical assistance to area and insuring offices' equal opportunity staff on the implementation of HUD regulations.[54]

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[50] As of June 1973, only the Philadelphia and Atlanta regions had been visited. However, a presentation of industry-wide affirmative marketing plans has been developed by this office and the office staff expected that it would be presented to all regions. Interview with Nat Smith, Director, Office of Voluntary Compliance, HUD, June 12, 1973. As of May 1974, however, it does not appear that such a presentation had been made in all regions. In San Francisco, for example, only the Assistant Regional Administrator for Equal Opportunity had received training on industry-wide affirmative marketing plans from the central office. This training was provided in Las Vegas, Nevada, on January 16, 1974. Telephone interview with Dana Jackson, Equal Opportunity Specialist, HUD Regional Office, San Francisco, Cal., May 2, 1974.

[51] This office recently was renamed the Office of Policy Development and Data Analysis.

[52] Program standards (See Section IV, pp.71-106 infra) are civil rights requirements which be met by an applicant before receiving HUD funding. HUD elaborates: "They also include requirements during program operation, e.g., a community must conduct its relocation program as to affirmatively further fair housing objective." November 1974 Toote letter, supra note 32.

HUD increased the civil rights staffing in its Washington office from 72 in fiscal year 1972 to 77 in 1973. Because HUD's April 1972 reorganization created new functions in the central office, it is not possible to indicate which functions in the Washington office received a staffing increase.[55]

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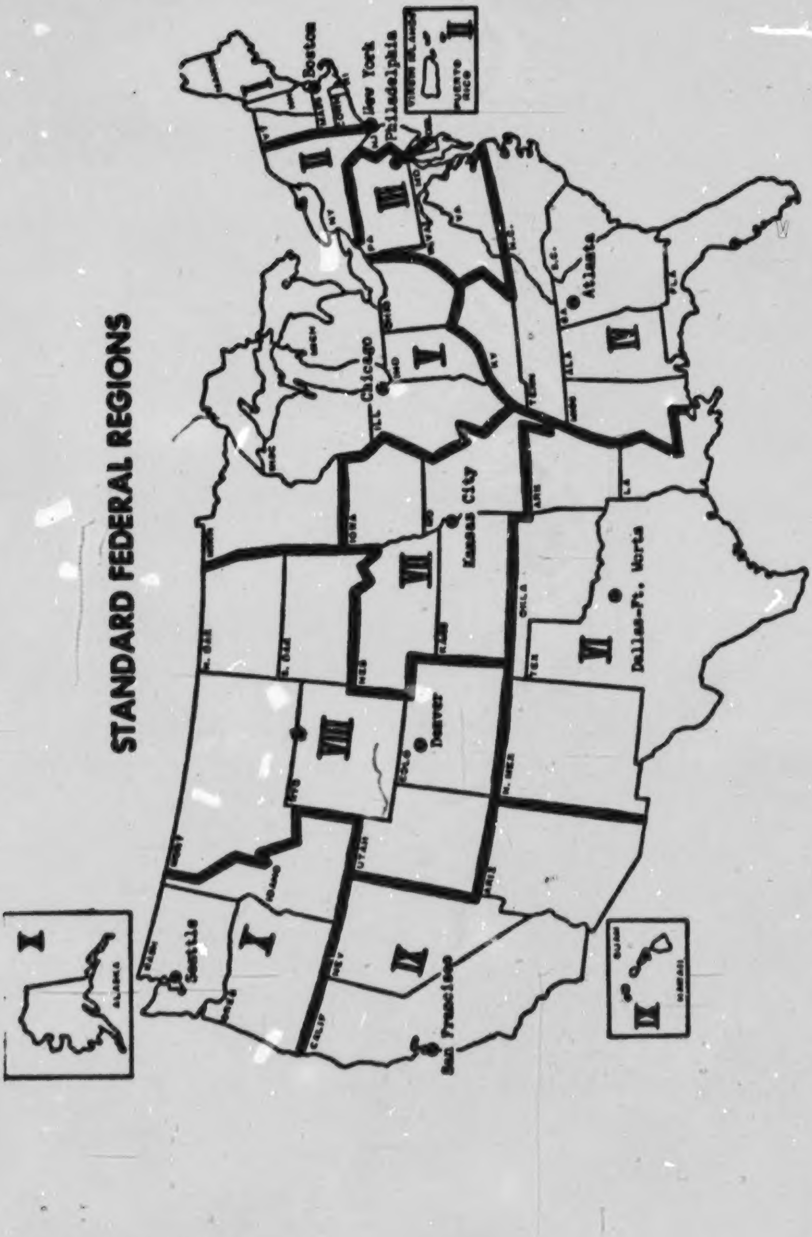
[53] Housing Act of 1954, 40 U.S.C. § 8461 (1970) as amended, 40 U.S.C. § 461 (Supp. II, 1972). Under Section 701, HUD provides planning assistance grants to State and local governments and areawide multijurisdictional organizations. These regulations are further discussed in Section IV, p. 95 infra.

[54] For more information on affirmative marketing see Section IV, p. 76 infra.

[55] In addition to HUD's equal opportunity staff, HUD's program staff in both the Washington and field offices have civil rights responsibilities. For example, they evaluate applications for comprehensive planning assistance which are required to contain equal opportunity elements involving such matters as staffing and work programs. The selective reviews they conduct of HUD-funded programs often contain equal opportunity components. In addition, along with equal opportunity staff, they administer HUD program standards.

STANDARD FEDERAL REGIONS


X
ALASKA
Seattle
X
San Francisco
IX
IX
HAWAII
GUAM
VIII
Denver
VII
Kansas City
VI
Dallas-Ft. Worth
V
Chicago
IV
Atlanta
III
Philadelphia
II
New York
I
Boston
PUERTO RICO
VIRGIN ISLANDS
II

B. Regional Offices[56]

The regional office is the highest level field office.[57] The other field offices, i.e., the area and Federal Housing Administration (FHA) insuring offices, are responsible to the regional office,[58] which has an overall coordinating responsibility for HUD programs within its geographic area. It disseminates and interprets HUD central office policies to its subordinate field offices It allocates funds to each of its field offices and evaluates their performance in the administration of their responsibilities.

The overall responsibility for implementation of the equal opportunity program is delegated to the Regional Administrator at the regional office level. This responsibility is, however, handled on a day-to-day basis by the Assistant Regional Administrator for Equal Opportunity and her or his staff.

The Offices of the Assistant Regional Administrators for Equal Opportunity are composed of compliance divisions and field support and evaluation divisions.[59] The compliance divisions are responsible for undertaking all compliance activities such as complaint investigations and compliance reviews under Title VIII, Title VI, and Executive Order 11063.[60] The field support and evaluation division's primary responsibility is to act as a liaison between the central office in Washington and the area and insuring offices. For example, it interprets policy issuances to field staff in order to assure uniformity in implementation, and it monitors and evaluates the performance of the equal opportunity staff of the area and insuring offices.

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[56] HUD regions are the standard Federal regions, see map on p. 22. The 10 regional offices are located in: Region I - Boston, Mass.; II - New York, N.Y.; III - Philadelphia, Pa.; IV - Atlanta, Ga.; V - Chicago, Ill.; VI - Dallas-Fort Worth, Tex.; VII - Kansas City, Mo.; VIII - Denver, Colo.; IX - San Francisco, Cal.; and X - Seattle, Wash.

[57] See Organizational Chart III on p. 25.

[58] In collecting information for this report, Commission staff visited HUD regional offices in Boston, Fort Worth, San Francisco, and Chicago; area offices in Boston, Dallas, New Orleans, San Francisco, Los Angeles and Chicago; and the insuring office in Fort Worth. On September 10, 1973, the Fort Worth Regional Office was moved to Dallas, Tex.

In fiscal year 1973, there was a total of 148 equal opportunity staff assigned to the 10 regional offices.[61] This is an increase of 14 positions from fiscal year 1972. Across the Nation, 26 were assigned to the staffs of the Assistant Regional Administrators, 99 to the compliance divisions, and 23 to the evaluation and field support divisions.[62]

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[59] These divisions were created in April 1972 as a result of a broad scale reorganization of the HUD equal opportunity program.

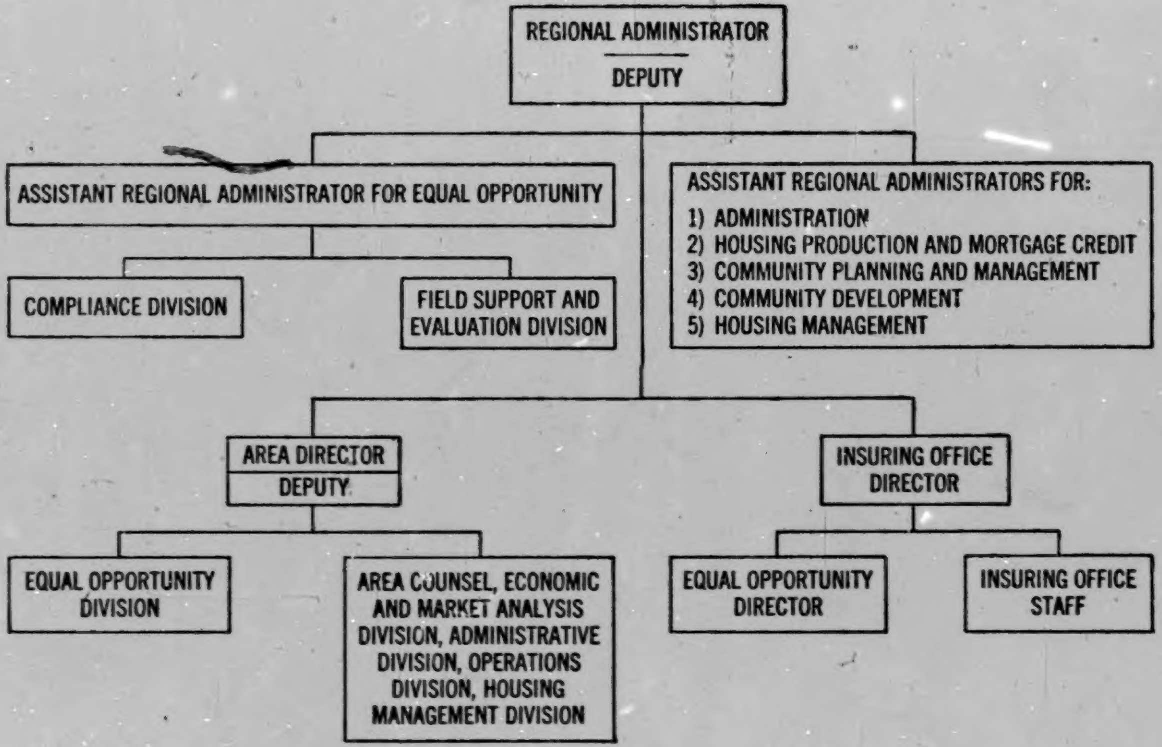
[60] In addition, these divisions are charged with implementing Executive Order 11246 (3 C.F.R. § 339 (1965)) as amended by Executive Order 11375 (3 C.F.R. § 803 (1969)), HUD's internal equal employment opportunity program, and HUD's minority business enterprise program.

[61] HUD response, supra note 47.

[62] The number assigned varied from region to region. The following was the staffing (excluding the Regional Administrator) of HUD regional offices at the time Commission staff conducted interviews in those offices: Boston - one part-time and three full-time professionals; Fort Worth - 11 full-time professionals; San Francisco - 1 part-time and 11 full-time professionals, and 2 semiprofessionals; Chicago - 1 part-time and 11 full-time professionals.

ORGANIZATIONAL CHART III

Department of Housing and Urban Development
Field Offices


REGIONAL ADMINISTRATOR
DEPUTY
ASSISTANT REGIONAL ADMINISTRATOR FOR EQUAL OPPORTUNITY
COMPLIANCE DIVISION
FIELD SUPPORT AND EVALUATION DIVISION
ASSISTANT REGIONAL ADMINISTRATORS FOR:
1) ADMINISTRATION
2) HOUSING PRODUCTION AND MORTGAGE CREDIT
3) COMMUNITY PLANNING AND MANAGEMENT
4) COMMUNITY DEVELOPMENT
5) HOUSING MANAGEMENT
AREA DIRECTOR
DEPUTY
INSURING OFFICE DIRECTOR
EQUAL OPPORTUNITY DIVISION
AREA COUNSEL, ECONOMIC AND MARKET ANALYSIS DIVISION, ADMINISTRATIVE DIVISION, OPERATIONS DIVISION, HOUSING MANAGEMENT DIVISION
EQUAL OPPORTUNITY DIRECTOR
INSURING OFFICE STAFF

C. Area and Insuring Offices

HUD has 39 area offices, with direct funding responsibilities for the various housing, planning, and community development programs in their geographic jurisdiction; and 38 insuring offices, all with direct funding responsibilities for Federal Housing Administration (FHA) programs[63] within their jurisdictions. The directors of both levels of offices report to the regional administrators. All applications for insurance, loans, and grants under these programs are thus submitted to area and insuring offices, which have the decisionmaking responsibility of approving or disapproving them.

In each area office there is an equal opportunity division[64] responsible for reviewing affirmative marketing plans[65] and for overseeing the program staff's implementation of equal opportunity standards.[66] One hundred and fifty-two persons in the HUD area offices were assigned full-time civil rights responsibilities in fiscal year 1973, an increase of 11 since fiscal year 1972. A total of 50 persons were assigned in fiscal year 1973 to the insuring offices to carry out full-time civil rights responsibilities. For the first time, in fiscal year 1973, there were equal opportunity staff in most of the FHA insuring offices. Most of these persons were equal opportunity specialists and some were equal opportunity directors. As of November 1974 there were eight equal opportunity director positions in insuring offices.[67] The equal opportunity specialists, generally without additional staff or clerical assistance, and the equal opportunity directors are responsible for oversight of program standards. As of April 1973 nine insuring offices had not been assigned equal opportunity staff.[68]

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[63] The FHA is an organizational unit within HUD which operates insurance programs under the provisions of the National Housing Act. The FHA provides insurance for private lenders against loss on mortgages financing homes, multifamily projects, land development projects, and group practice facilities projects and against loss on loans for property improvements. In addition, it insures investments in rental housing projects. FHA programs are similar to Veterans Administration housing programs. See Chapter 3, Veterans Administration, Section I.

[64] These divisions average almost four persons per office.

[65] Affirmative marketing plans are discussed further in Section IV, p.76 infra.

[66] Program standards are discussed further in Section IV, p.71 infra.

Equal opportunity staff in both the area and insuring offices provide equal opportunity training and technical assistance for other HUD area and insuring office staff. They also provide such assistance to members of the real estate industry and local offices seeking guidance in meeting HUD requirements.[69]

D. Training

HUD's civil rights training has greatly improved during the past year.[70] In the early summer of 1972, HUD developed the "Star Training Program" which was a special effort to increase job opportunities for HUD staff employed outside the area of equal opportunity.[71]

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67. November 1974 Toote letter, supra note 32.

68. As of August 1973, there was no equal opportunity staff assigned in the following insuring offices: Region I - Bangor, Me., and Burlington, Vt.; Region II - Albany, N.Y.; Region VII - Des Moines, Iowa.; Region VIII- Helena, Mont.; Fargo, N.D., Sioux Falls, S.D., Salt Lake City, Ut., and Casper, Wyo.

69. The area and insuring offices' equal opportunity staff provide technical assistance to program staff when necessary with regard to internal employment and minority entrepreneurship.

70. Until fiscal year 1972, HUD's equal opportunity training was largely ad hoc. See The Federal Civil Rights Enforcement Effort--A Reassessment, supra note 41, at 132.

71. It was instituted at the time of the April 1972 reorganization of HUD's equal opportunity office when there were expanded career opportunities at the area and insuring office level. Twenty program staff members received this "Star Training" and were subsequently placed in area and insuring offices as equal opportunity specialists.

This program involved 4 weeks of intensive classroom training conducted in Washington,[72] followed by 8 weeks of on-the-job training.

From June 5 through June 10, 1972, the central office staff conducted the Equal Opportunity Spring Training Program with the major goal of providing training in all areas of responsibility to the 20 newly appointed directors[73] of compliance and directors of field support and evaluation for the regional offices.[74] The central office personnel of the Office of Civil Rights Compliance and Enforcement held a HUD National Equal Opportunity Compliance and Enforcement Training Conference in Chicago from December 18, 1972, to December 21, 1972. The central theme of the conference was the effective use of procedures to effect meaningful and timely remedies for complaints under Title VI, Title VIII, and Executive Orders 11063, 11246[75] as amended, and 11478.[76] Case studies were used to highlight practical areas of concern and to elicit group participation.

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[72] The purpose of the classroom training was to familiarize the trainees with HUD's equal opportunity responsibilities. It included about a week of intensive training on conducting complaint investigations and compliance reviews.

[73] The 10 Assistant Regional Administrators for Equal Opportunity were also in attendance. Each trainee received approximately 40 hours of training in all areas of HUD's civil rights compliance responsibilities. On June 11, the 77 area and insuring office equal opportunity directors, as well as the 20 Star trainees met for a full day of training devoted exclusively to affirmative marketing.

[74] These two positions were created in the April 1972 reorganization and, therefore, required the directors to be trained for their new responsibilities.

[75] This Executive order as amended prohibits discrimination because of race, creed, color, national origin, and sex in employment by government contractors and subcontractors, and in federally-assisted construction contrasts. The Executive orders also require affirmative action by those covered to overcome any underutilization of minorities and women.

[76] Executive Order 11478, 3 C.F.R. § 803 (1969), prohibits discrimination in Federal employment because of race, color, religion, sex, or national origin and directs each department or agency to establish a continuing affirmative program of equal employment opportunity.

Forty-three equal opportunity specialists working in compliance and enforcement in HUD's 10 regional offices, together with nine regional counsel representatives directly involved in compliance activities, participated in a 5-day session consisting of 35 training hours.[77]

From April 16 through 20, 1973, the HUD Training Conference for Equal Opportunity Specialists was held at the HUD-East Training Center[78] in Rosslyn, Virginia. The conference, conducted by the central office staff of the Office of Compliance and Enforcement, had as its principal subject matters both Title VIII and contract compliance investigative procedures.[79]

In addition to the previously discussed national conferences, the central office, in cooperation with specific regional offices, provided training to central, regional, area, and insuring office staffs in Title VI, Title VIII, and Executive Order 11246 enforcement and implementation of program standards. This training, which lasted 32 hours, was conducted in Regional III, IV, V, VII, VIII, IX, and X.[80]

This brief overview of the organizational structure, staffing, and

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77. HUD response, supra note 47.

78. Two training centers called HUD-East and HUD-West (Denver, Colo.) were established by HUD in 1972. These centers are used by HUD to provide training to HUD program staff in their program responsibilities as well as to provide civil rights training to equal opportunity staff.

79. The training attempted to equip each trainee with the necessary skills to successfully investigate housing discrimination cases, including fact-gathering and preparation of the final investigation report. Twenty-seven regional office trainee staff-level personnel, who were newly assigned to equal opportunity or who had received no previous training, were in attendance. Approximately 40 hours were involved in the training, which was followed by a period of on-the-job training.

80. The following are examples of the equal opportunity subjects covered in the training: field office role in Title VIII complaint processing; Executive Order 11246 compliance; Title VI complaints and compliance reviews; use of census data in equal opportunity; program standards; water and sewer and 701 planning programs; workable programs; reviewing and monitoring of affirmative fair housing marketing programs; annual arrangements; and voluntary compliance in housing and community development programs.

training activities in the fair housing area indicates that the Department of Housing and Urban Development has been increasing its investigative energy and resources in the area of fair housing. The remainder of the HUD report will set forth the Commission's reasons for believing that this increased investment has had to date a minimal impact on the elimination, in our Nation, of segregated housing.

III. Compliance Mechanisms

A. Fair Housing Activities--Title VIII

1. Complaints

HUD's fair housing program continues to be oriented toward the investigation of complaints,[81] a largely *ad hoc* approach to the prevention and elimination of housing discrimination.[82] This is important but must be continued. Nevertheless, HUD needs to focus more strongly on community wide pattern and practice reviews as a means to bring about fair housing to all citizens. HUD reports that approximately 52 percent of equal opportunity regional staff time is spent on the enforcement of

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[81] HUD notes that this is because of its mandate from the Congress. HUD stated:

> The Department of Housing and Urban Development is not authorized to ignore a congressional mandate to process complaints of housing discrimination as required by Title VIII of the Civil Rights Act of 1968, Section 810(a) to process complaints of housing discrimination. November 1974 Toote letter *supra* note 32.

[82] HUD recognizes that a complaint-oriented enforcement system will not in the long run make fair housing a reality. It has expressed hope that it will be getting away from a solely complaint-oriented system through the development of affirmative marketing agreements. Dr. Toote stated:

> While we have not yet had sufficient experience in evaluating the impact of these agreements, we believe they can be of great assistance in breaking down dual market operations. Attachment to letter from Dr. Gloria E. Toote, Assistant Secretary for Equal Opportunity, Department of Housing and Urban Development, to John A. Buggs, Staff Director, United States Commission on Civil Rights, Sept. 16, 1974.

These agreements, which are discussed on pp. 76-91 *infra* have not resulted in significant progress toward fair housing, however.

Title VIII.[83] As in previous years, HUD reported that nearly all of this Title VIII effort is devoted to the processing of complaints. During the first 9 months of fiscal year 1973, HUD regional offices received a total of 2,053 Title VIII complaints,[84] an average of almost 230 complaints per month. This represents an increase of more than 25 percent over Title VIII complaints received by HUD during fiscal year 1972.[85] The largest number of complaints--454--was received by the San Francisco Regional Office, and the smallest number--24--by the Boston Regional Office.

HUD regional offices attribute the number of complaints, nearly double that received in fiscal year 1971, to an advertising and publicity campaign begun in the eastern United States in 1971. The campaign, using the theme "HUD Opens Doors," utilized television, radio, and posters to publicize HUD's "Hot-Line" number for toll-free telephoning of complaints.[86]

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[83] HUD response, supra note 47. HUD statistics were obtained from a Departmental Time and Cost Reporting System in operation since August 1972. There is wide variation in the amount of time spent on Title VIII compliance. For example, the Chicago office devotes 85-90 percent of its time on Title VIII compliance. Interview with Thomas Higginbotham, Director, Compliance Division, HUD Regional Office, Chicago, Ill., in Chicago, May 5, 1973. The remaining time is spent on Title VI, Executive Order 11063, internal equal employment opportunity, contract compliance, and minority entrepreneurship.

[84] Of the complainants who could be identified by race, HUD reports the following: 80.5 percent, black; 8.8 percent, white nonminority; 6.9 percent, Spanish speaking; 1.4 percent, American Indian; 6 percent, Asian American; and 1.8 percent, other.

[85] In fiscal year 1972, HUD received 2,159 Title VIII complaints, about 180 per month.

[86] The calls are received at HUD's central office in Washington, where the complainant can leave a recorded message stating where she or he can be reached. The complainant is later contacted by HUD to obtain more information on the complaint and the complaint is forwarded to the appropriate regional office for investigation. One regional office staff member stated that many complaints are lost through this procedure because it takes several weeks from the initial call for the complaint to reach the regional office. Interview with Barbara Jones, Compliance Specialist, HUD Regional Office, Chicago, Ill., in Chicago, May 15, 1973.

In June 1972, the advertising campaign was expanded west of the Mississippi, and HUD reports that as a result, regional offices in that area began to receive increased complaints. For example, the Fort Worth Regional Office received 91 complaints in fiscal year 1972 and 272 complaints during the first 7 months of fiscal year 1973. The San Francisco Regional Office received 381 complaints during fiscal year 1972 and 328 complaints during the first 7 months of fiscal year 1973.[87] Complaints have continued to increase east of the Mississippi as well. The Chicago Regional Office received 206 complaints in fiscal year 1972 and 239 complaints during the first 10 months of fiscal year 1973.[88]

Although HUD's increased efforts to make the public aware of its rights to file housing discrimination complaints should be commended, it should also be noted that these efforts do not extend equally to all segments of the minority community. Although the fair housing advertising campaign includes television and radio announcements and posters and fair housing pamphlets in Spanish, HUD regional office staff expressed the belief that

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87. San Francisco's complaint volume was higher than most HUD offices prior to the campaign, in part due to a special publicity campaign "Operation Sentinel" funded by HUD in northern California during 1971. In February 1971, the National Committee Against Discrimination in Housing gave $6,000 of a HUD grant to "Operation Sentinel," a group staffed by the Mid-peninsula Urban Coalition in Palo Alto, California. "Operation Sentinel" devised a 6 month series of radio and television spot announcements publicizing the Fair Housing Law and HUD's role in responding to complaints. When the first grant expired, "Operation Sentinel" received another $10,000 grant from HUD to continue the publicity campaign for 6 more months.

88. The largest number of complaints, approximately 20 percent or 54 of 239, came from Ohio. Fair housing groups such as the Housing Opportunities Made Equal of Cincinnati, the Housing Opportunities Center of Cleveland, and its branch in Columbus, are very active and assist persons in filing discrimination complaints as well as informing them of their rights. In addition, the Chicago Regional Office staff believe that the advertising campaign is more visible and aggressive in Ohio than in the other States in the region. Jones interview, supra note 86.

they are not reaching the Spanish speaking community.[89] HUD has made no special effort to distribute fair housing posters and brochures in Spanish except to its own field offices. Builders, developers, lenders, and real estate brokers are, thus, generally not supplied with materials in Spanish.[90] There are no materials available in languages other than Spanish or English; for example, Chinese, Japanese, or in Native American languages.

Only 5 percent of the complaints from persons known[91] to be minority[92] received in the Chicago Regional Office during the first 9 months of fiscal year 1973 were from complainants of Spanish speaking background and no complaints were received from Native Americans.[93] Approximately 9 percent of complaints received from persons known to be minorities in the Fort Worth Regional Office during fiscal year 1973 were from complainants of Spanish speaking origin[94] and 1 percent were from Native Americans.[95] Very few

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89. Interview with Marvin R. Smith, Director, Compliance Division, HUD Regional Office, San Francisco, Cal., in San Francisco, Mar. 19, 1973, and Higginbotham interview, supra note 83. In March 1968, the Fort Worth Regional Office held a conference in El Paso with participants from nearly 300 Spanish speaking community groups and local and national organizations from Texas and New Mexico. At that time, however, the Federal Fair Housing Law was not even in existence. There has been no followup to the conference.

90. Jones interview, supra note 86.

91. HUD does not know the race and ethnic origin of more than 10 percent of its complainants throughout the United States.

92. One hundred and eighty-one of the 210 complaints received in Chicago from July 1972 to March 1973 were from minorities; 172 were from blacks; 1 was from a Puerto Rican, 6 from Mexican Americans, and 2 from Cuban Americans.

93. HUD response, supra note 47. According to the 1970 census, there were 3,914,692 minority persons in the Chicago region. More than 19 percent of the minority population were of Spanish speaking background (757,024). Census also reports that there were 74,206 Native Americans in the Chicago region, approximately 2 percent of the minority population.

94. HUD response, supra note 47. As of the 1970 census, there were 5,611,261 minority persons in the Fort Worth region. Approximately 40.9 percent of that population (2,295,419) were of Spanish speaking background.

95. As of the 1970 census, there were 196,521 Native Americans in the Fort Worth region, which is approximately 3.5 percent of the minority population.

complaints were received from any part of New Mexico, which has large concentrations of Mexican American and Native American families, or from west or south Texas, which are heavily populated by Mexican Americans.

In the San Francisco office, during the first 9 months of fiscal year 1973, only 13 percent of housing discrimination complaints received from persons known to be minority were from families of Spanish speaking background,[96] 2 percent from Asian Americans,[97] and about 2 percent from Native Americans.[98] Very few complaints were from Nevada or Arizona, States with substantial populations of Mexican Americans and Native Americans. The complaints which the San Francisco office did receive from Native Americans came from southern California and the HUD office believes[99] that this is due to the existence of an Indian organization in Los Angeles which has been assisting Indians who have encountered discrimination to file complaints with HUD.[100]

Equal opportunity staff in all the regional offices visited by Commission staff attributed the lack of complaints from people of Spanish speaking background, Native Americans, and Asian Americans to a lack of awareness of the law and cynicism regarding remedies for discrimination which can only be overcome by education regarding fair housing rights.[101]

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[96] 96. As of the 1970 census, there were 5,548,139 minority persons in the San Francisco region. Approximately 48.3 percent of that population (2,679,123) were of Spanish speaking background.

[97] 97. As of the 1970 census, there were 895,915 Asian Americans in the San Francisco region, which is approximately 16.1 percent of the minority population.

[98] 98. As of the 1970 census, there were 195,889 Native Americans in the San Francisco region, which is approximately 3.5 percent of the minority population.

[99] 99. Marvin Smith interview, supra note 89.

[100] 100. This organization, the Urban Indian Development Association (UIDA), provides orientation and assistance to Indians coming to the Los Angeles area from reservations.

2. Complaint Backlog

As of March 31, 1973, HUD had on hand 464 uninvestigated complaints, well over 20 percent of the complaints it had received in fiscal year 1973, and 622 complaints (over 30 percent) which it had not resolved.[102] One reason for HUD's sizeable backlog is the lengthy processing time for Title VIII complaints.[103]

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[101] Interview with Harold Odom, Chief of Compliance, HUD Regional Office, Fort Worth, Tex., in Fort Worth, Jan. 29, 1973. Marvin Smith interview, _supra_ note 89; Higginbotham interview, _supra_ note 83.

[102] HUD response, _supra_ note 47. Boston, which received only 29 complaints in the first 9 months of fiscal year 1973, had only 1 uninvestigated complaint on hand at that time; Chicago, which had received 210 complaints, had 45 (21.4 percent) univestigated complaints on hand; Dallas, which had received 335 complaints, had not investigated 133 of them (39.7 percent); San Francisco had received 454 complaints and had not investigated 373 (82.2 percent) of them.

[103] In March 1974, HUD established a task force to eliminate the Title VIII complaint backlog. By the end of fiscal year 1974, HUD stated that the task force had closed 921 cases, which was a 255 percent increase over an average equivalent period in fiscal year 1972. September 1974 Toote letter, _supra_ note 82.

In 1972, the average processing time for a Title VIII complaint was 5½ months.[104] In 1973 HUD informed this Commission that the handling time still remains unchanged.[105] This protracted process seems unwarranted. In fact, Commission staff were told by one HUD investigator in Chicago that it takes approximately 80 person-hours to investigate a complaint, prepare a final investigation report, and arrive at a determination for resolution.[106] Similarly, staff in the Fort Worth Regional Office estimate that a reasonable workload for a compliance officer would be 36 to 40 complaints per year.[107] San Francisco staff were even more optimistic about HUD's capacity. One regional staff member estimated that a staff of six full-time equal opportunity compliance specialists are able to close approximately 50 to 75 cases per month.[108]

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[104] HUD states:

> While the average lasped time for processing a Title VIII complaint was approximately 5 1/2 months in 1972, it is important to indicate that continuous staff time is not generally spent processing any individual for that period of time. Continuous efforts are going forward to reduce this time. Accordingly, it is the opinion of this office that the complaint processing itself is not protracted. November 1974 Toote letter, supra note 32.

[105] HUD response, supra note 47.

[106] Jones interview, supra note 86. This investigator had 45 outstanding complaints, 20 of which she was handling personally. The others had been referred to State and local agencies for handling.

In order to expedite complaint processing, a "Short-Form Processing Procedure" for rental discrimination complaints[109] was developed by HUD and tested by the Philadelphia Regional Office in the spring and summer of 1972. All regional offices were required to use this procedure starting in October 1972. HUD reports that this form has now been adopted by all regional offices,[110] although not all offices were using this form at the time of Commission interviews.[111] When it was in use, one regional staff member reported that it did not noticeably decrease their backlog.[112]

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[107] However, one compliance specialist had handled 34 cases in the 6 months prior to the Commission interview and had 20 investigations and five conciliations on hand at the time. Interview with Samuel Hudson, Compliance Specialist, HUD Regional Office, Fort Worth, Tex., in Fort Worth, Jan. 29, 1973.

[108] Interview with Ted Simmons, Conciliator, HUD Regional Office, San Francisco, Cal., in San Francisco, Mar. 20, 1973.

[109] This form is used to accelerate complaint handling in cases of rental discrimination. Under this accelerated process, cases are assigned on a priority basis for early investigation and a summary of the investigation report is reported by telephone to the regional office. Conciliation meetings are held forthwith and, if possible, an agreement is executed during the conference itself. See Department of Housing and Urban Development, Title VIII Field Operations Handbook EO 8020.1, revised.

[110] HUD response, supra note 47.

[111] Regions I, VI and IX were not using the "Short-Form Processing Procedure" in November 1972, January 1973, and March 1973, respectively.

[112] Higginbotham interview, supra note 83.

Staff in all of the regional offices claim that their primary problem in complaint disposition is insufficient staff to conduct complaint investigations and conciliations.[113] The time-consuming steps in investigating complaints often include ownership research.[114] Indeed, HUD's investigation of Title VIII complaints appears generally to have been thorough.

While lack of staff is clearly a serious problem,[115] the greatest stumbling block to HUD's efficient and timely processing of complaints lies in the necessity to rely as heavily as it does on the conciliation process itself. As noted in Section II, HUD lacks enforcement authority. Its only weapon against a noncomplying respondent is to refer her or his case to the Department of Justice (DOJ),[116] and thus it may take years to remedy a problem, if it can be remedied at all. Consequently, this lack of enforcement authority makes it very difficult for HUD to resolve the complaints it receives.

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113. Interview with Irving Horwitz, Assistant Regional Administrator for Equal Opportunity, HUD Regional Office, Chicago, Ill., in Chicago, May 5, 1973; and Cliff Jeffers, Assistant Regional Administrator for Equal Opportunity, HUD Regional Office, San Francisco, Cal., in San Francisco, Mar. 19, 1973; Vera interview, *supra* note 42; and A. Maceo Smith interview, *supra* note 42.

114. Ownership research is always part of any investigation in the Chicago region. If the respondent is found to own other properties, a commitment to fair housing on these properties is included in the conciliation agreement.

115. For example, the Chicago Regional Office has only nine professional staff members to handle Title VIII, Title VI, and Executive Order 11246. In April 1972, HUD underwent a reorganization and the Chicago Regional Equal Opportunity Office lost five professional positions. In San Francisco, the complaints division which handles Title VI, Title VIII, and Executive Order 11063 has six full-time professionals and two assistants.

116. Referals to DOJ are discussed further in Section VI, B, p. 126 *infra*.

HUD reports that between July 1972 and March 1973 a total of 1,601 Title VIII complaints were closed. HUD itself closed 1,214 cases and the remainder were closed by State agencies to which HUD had referred complaints. Only a few of these closed by HUD brought relief to the complainants, illustrating the point that the processing of individual complaints must be accompanied by a program that will eliminate the root causes of discrimination if there is to be genuine progress in the direction of assuring equal opportunity in housing. In fact only 262, or slightly more than one-fifth, of the 1,214 cases closed by HUD went to conciliation.[117] Of these 262 cases, just over one-half (54.2 percent) were conciliated successfully.[118] The regional offices visited by Commission staff had similar complaint closure records.[119]

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[117] The complaints which were not conciliated were "closed" as follows: withdrawn-14 percent; insufficient information-13.2 percent; "decided not to resolve"-51.2 percent. Those complaints which HUD "decided not to resolve" were generally ones in which no violation of Title VIII could be substantiated. "Decided not to resolve" means that HUD determines not to conciliate, after it has conducted an investigation to see if there appears to be sufficient evidence of discrimination. 1974 Holbert interview, supra note 40.

[118] The complaints which were not conciliated successfully were as follows: unsuccessful conciliations-39.3 percent; partially successful conciliations-6.5 percent.

[119] The regions visited by Commission staff had the following complaint records between July 1972 and March 1973: Boston 24 closed, 6 closed by HUD, no conciliations; Chicago 115 closed, 87 by HUD, 10 percent conciliated, 20 percent successfully; Fort Worth 187 closed, 186 by HUD, 38 percent conciliated, 58 percent successfully; San Francisco 457 closed, 369 by HUD, 12.5 percent conciliated, 43.5 percent successfully. During the summer of 1972, the San Francisco Regional Office funded a task force of seven law students to handle investigations on a part-time basis and seven university professors to conduct conciliations. As a result, more than 100 complaints were closed during August and September 1972.

The backlog found in most regional offices probably accounts to some extent for the large number of complaints "withdrawn"[120] by complainants who did not wait for the end of the complaint process.[121] Regional office staff report that another consequence of the backlog is that conciliations are often rushed. Conciliations may result in individual relief, such as monetary damages for a complainant, over and above obtaining the housing in question and the basic elements of an agreement[122] requiring affirmative action by the respondent.

Even a more serious deficiency than its delayed complaint processing is HUD's treatment of cases once they have been successfully resolved through conciliation. Ironically, once HUD has negotiated a hard-won agreement, it frequently makes no effort to monitor the agreement to see that it is carried out.[123] HUD reported in July 1972 that compliance reviews of Title VIII conciliation agreements would be instituted on a regular basis,[124] but more than 1 year later, HUD reports that it still has not instituted such regular reviews.[125]

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[120] In Boston only one complaint was withdrawn between 1972 and March 1973; in Chicago 17 (8.1 percent) were withdrawn; in Fort Worth 17 (5.1 percent) were withdrawn; in San Francisco 63 (13.9 percent) were withdrawn, more than in any other regional office.

[121] In Chicago, for example, a compliance officer estimated that the majority of the region's complaints involve rental cases against managers and landlords. Since rental housing is a scarce commodity which is generally needed immediately and HUD's backlog does not permit immediate investigation, the complainants often do not want HUD assistance by the time HUD is ready to investigate their complaints. Jones interview, *supra* note 86.

[122] This would include an agreement by the landlord or broker to advertise affirmatively, to put up HUD fair housing posters, and to report periodically to HUD on racial and ethnic occupancy of units. The Chicago office reports that it always attempts to insert in the conciliation agreement requirements similar to the affirmative marketing requirements and, in addition, it asks for reports on all projects owned by the respondent. *Id*.

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[123] In specific instances HUD sometimes has conducted limited monitoring of its conciliation agreements but this practice is not widespread. In April 1972, the San Francisco Regional Office assigned a trainee to the task of monitoring respondent reports and sending out followup letters if the reports were not received. In a one-time effort in January 1973, the Fort Worth office mailed out letters to respondents requesting reports on positive action taken to comply with Title VIII. HUD recently stated:

> HUD Regional offices received instructions regarding compliance reviews of respondents who are parties to conciliation agreements consummated pursuant to Title VIII of the Civil Rights Act of 1968. The instructions included a Compliance Review Check List which is to be utilized for the conduct of such compliance reviews which hopefully will increase during fiscal year 1975. November 1974 Toote letter, supra note 32.

[124] HUD response to the Commission July 5, 1972, questionnaire contained in letter form from George Romney, Secretary of Housing and Urban Development, to Theodore M. Hesburgh, Chairman, U.S. Commission on Civil Rights, August 18, 1972.

[125] HUD response, supra note 47. 24 C.F.R. § 115.1 (1974).

3. Referrals to State and Local Agencies

HUD currently refers Title VIII complaints to 28 States and 16 localities which have been found to have fair housing powers substantially equivalent to those given to HUD by Title VIII of the Civil Rights Act of 1968.[126] HUD's central office is responsible for reviewing and evaluating State and local laws to determine if they qualify for substantial equivalency status.[127] If a State or local agency is found qualified, it is sent a letter from the central office notifying it that substantial equivalency status has been granted and that HUD will be referring complaints to it. The regional office is then generally responsible for establishing the affiliation between HUD and the agency and informing it of procedures

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126. A State or local agency is determined to be substantially equivalent if the State or locality's fair housing law and its administration provide rights and remedies substantially equivalent to those provided by HUD's administration of Title VIII. In the regions visited by Commission staff, the following States and localities have been granted substantial equivalency status by HUD: Boston Region-Connecticut, Massachusetts, New Hampshire, Rhode Island, Vermont, Chicago Region-Indiana, Illinois, Aurora, Peoria, Springfield and Urbana, Ill.; Michigan; Ann Arbor, Mich.; Minnesota; Ohio; Wisconsin; Fort Worth Region-New Mexico; San Francisco Region-California; Hawaii; Nevada.

127. Interview with Kenneth Holbert, Director, Office of Civil Rights Compliance and Enforcement, HUD, June 19, 1973.

that are to be followed.[128] In August of 1973 HUD central office staff stated they were developing a model memorandum of understanding to be used by regional offices and State and local agencies because regions differed in the agreements and procedures they had established.[129] As of November 1974, however, the model memorandum of understanding existed only in draft form.[130]

A total of 790 Title VIII complaints were referred to State and local agencies between July 1972 and March 1973.[131] The agencies closed 384 of these complaint cases and only 75 of these were conciliated. As of March 1973, State and local agencies had a backlog of 406 unresolved complaints, a little over half of the number of complaint cases received by them in the previous 9 months.[132]

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128. Some regional staff members feel that the regional offices should be given a larger voice in the decision to grant substantial equivalency status. They allege that at times a State may not even know that it is under consideration for such status and is not prepared to accept the responsibility. Thompson interview, supra note 42, and Horwitz interview, supra note 113.

129. 1973 Holbert interview, supra note 127. In the San Francisco Regional Office, all Title VIII complaints are referred to State and local agencies with the exception of complaints where the respondent is receiving Federal assistance. The Chicago Regional Office is considering requesting State and local agencies in its area to waive referral rights in order to accelerate rental complaints. The Boston Regional Office has a Memorandum of Understanding with State and local agencies stating that when the agencies receive complaints of discrimination involving HUD recipients, HUD will use its leverage to achieve a resolution of the case. For example, HUD could defer funding of the respondent pending a State resolution of a complaint against the application; however, as of the Commission's interviews in Boston, Mass., in November 1972, it had not done so.

130. November 1974 Toote letter, supra note 32.

131. The following is a breakdown of complaint referrals to State and local agencies by HUD regional offices: Boston 16; New York 84; Philadelphia 259; Atlanta 7; Chicago 74; Fort Worth 2; Kansas City 15; Denver 7; San Francisco 319; Seattle 7.

132. HUD response, supra note 47

Under Section 801(c) of Title VIII, HUD may take action to recall a complaint if a State or local agency has not commenced proceedings within 30 days or, having done so, has not carried forward such proceedings with reasonable promptness. According to a HUD regional staff member, complaints are rarely recalled.[133] Some HUD regional staff may be reluctant to recall complaints because they do not want to add to their own workload and believe that HUD's backlog would only cause further delays.[134] In addition, HUD may be reluctant to recall complaints because some complainants may benefit from State powers where they are stronger than those afforded by Title VIII.[135]

HUD may rescind a State or local agency's substantial equivalency status if it does not perform adequately in handling Title VIII complaints referred by HUD. According to the HUD central office, the agencies are given an ongoing evaluation.[136] In some cases, regional offices have recommended that HUD rescind a State agency's substantial equivalency status.[137] HUD has been able to use its power to rescind a State agency's substantial equivalency status to influence State action and strengthen the power and ability of State agencies to carry out fair housing enforcement.[138]

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[133] Interview with Lionel Jenkins, Compliance Office, HUD Regional Office, Boston, Mass., in Boston, Nov. 14, 1972. HUD recently reported:

> HUD staff have been instructed to recall complaints when they qualify for recall pursuant to Part 115, 37 F.R. 16540, Recognition of Substantially Equivalent Laws. November 1974 Toote letter, supra note 32.

[134] As of May 2, 1974, the Boston Regional Office has recalled only five complaints since July 1971, even though State agency complaint processing in the region is often backlogged. As of January 1973, the Fort Worth Regional Office had not recalled the one complaint it referred to New Mexico during fiscal year 1973 although nothing has been done on it by the State agency since its referral in August 1972.

An exception is the San Francisco Region. There, one State agency, the California Fair Employment Practices Commission (FEPC), was so overwhelmed with work that it returned 205 complaints referred to it during fiscal year 1972, and HUD had to recall an additional 44 complaints for lack of timely action on the part of the agency. As of January 1973, the FEPC had returned 133 additional complaints and HUD had recalled 50 more, leaving the FEPC with 55 referred Title VIII complaints.

[135] For example, the Massachusetts Commission Against Discrimination may hold hearings and subpena witnesses and material for such hearings. Additional powers of the Massachusetts agency are discussed on p. 46 infra.

The percentage of closed complaint cases conciliated by State and local agencies--19.5 percent--approximates the percentage conciliated by HUD--21.6 percent. However, where HUD reports only 54.2 percent of their cases were conciliated successfully, the State and local agencies report that 72 out of 75 or 96 percent of their conciliations were successful. This may be indicative of a difference in standards for "successful" conciliations, or it may reflect superior sanctions available to the agencies where conciliations prove unsuccessful.

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[136] This means that the agencies are continuously being monitored to ascertain that their laws and powers are equivalent to those of HUD. Holbert interview, supra note 127.

[137] The San Francisco Regional Office recommended that the California FEPC's status be rescinded. The Fort Worth Regional Office has warned the New Mexico State agency that HUD might rescind its status.

[138] In December 1972, HUD sent a letter to the Governor of California regarding the processing of complaints by FEPC. Following the letter, the FEPC was given additional staff and agreed to give housing complaints a greater priority. The Virginia State agency was granted tentative substantial equivalency status and later, after communications with HUD, money and staff were increased by the State and the Virginia fair housing law was amended.

Whereas HUD's only alternative is to refer unsuccessful conciliations to the Department of Justice, States sometimes have the power to obtain a temporary restraining order to prevent a respondent from renting or selling housing or to issue or request cease and desist orders. The Massachusetts Commission Against Discrimination, for example, has both of these powers.

Clearly the State and local agencies have good potential for effecting fair housing across the Nation, and HUD resources, such as technical assistance, might be used effectively to help them develop this potential. HUD, however, does not provide financial assistance to State and local agencies for the enforcement of fair housing laws or even to process the complaints HUD forwards to them.[139] This is because in 1969, HUD requested the authority and funds to make such grants but Congress rejected the request.

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[139] 1974 Holbert interview, supra note 40.

On an ongoing basis, some HUD regional offices have attempted to provide technical assistance to State and local agencies to improve their fair housing enforcement operations.[140] These efforts have not yet been extended to all regional offices which refer complaints to State and local agencies.[141]

In summary, the Commission investigation leads to the following conclusions: (1) that the complaint backlog has been so high as to produce a lack of confidence in the ability of the Department to obtain timely relief; (2) that HUD could take action to reduce the time span involved in negotiations for compliance; and (3) that HUD often fails to monitor the compliance agreements it does achieve.

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[140] Equal opportunity staff in various regions have met with State and local agency staff, including some agencies which have not been granted substantial equivalency, to establish a cooperative working relationship with as many agencies as possible. The Chicago office has held conferences in Chicago and Champaign, Ill., and in Detroit, Mich., to discuss techniques in handling discrimination cases. The San Francisco Regional Office has met with both the California FEPC staff and the executive staff of the Hawaii State Regulatory Agency on numerous occasions.

[141] Through fiscal year 1973, Region III (Philadelphia) and VI (Fort Worth) had not provided assistance to State and local agencies. HUD reported:

> During fiscal year 1974, Region III, (Philadelphia) provided training and technical assistance to states and localities in its regional jurisdiction. States and localities that received such assistance including training are, as follows: Pennsylvania, Delaware, West Virginia, District of Columbia, Maryland, Pittsburgh, Pa., Charleston, West Va., Philadelphia, Pa., Arlington County, Va., and the City of Rockville, Md. November 1974 Toote letter, supra note 32.

B. Other Title VIII Compliance Activities

1. Communitywide Pattern and Practice Reviews

In July 1972, HUD acknowledged the necessity for communitywide investigations[142] to identify patterns of housing discrimination, and stated that it planned to conduct citywide reviews for total equal opportunity compliance with the fair housing law and with the nondiscrimination requirements for HUD housing programs.[143] HUD's central office has not instructed regional offices to conduct such reviews and the Title VIII Field Operation Handbook does not contain any specific guidelines to be followed.[144] Most HUD regional offices are not making "pattern and practice" reviews, as they believe that the decision to go ahead with plans to conduct them must be made by the central office.[145]

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142. In communitywide reviews, HUD would examine such things as coverage of State and local fair housing laws, the types and quality of activity conducted by fair housing agencies, zoning ordinances, marketing activities of selected brokers and builders, mortgage financing practices of a sample of lenders, and data showing the racial and ethnic composition of neighborhoods throughout the area.

143. The Federal Civil Rights Enforcement Effort--A Reassessment, supra note 41, at 102.

144. HUD recently stated:

> While we can incorporate Title VIII reviews in certain areas along with city-wide reviews, a Title VIII compliance review is hampered because our subpoena power extends only to the investigation of complaints pursuant to Title VIII. November 1974 Toote letter, supra note 32.

145. Vera interview, supra note 42; Odom interview, supra note 101; and Jeffers interview, supra note 113.

HUD's regional offices have sufficient authority from their Title VIII mandate to implement such reviews without instruction from the central office. One regional office, Chicago, has conducted two such reviews without seeking or obtaining permission from Washington. Both reviews were conducted in Ohio, one in Parma, a suburb of Cleveland, which passed an ordinance prohibiting construction of public housing without a referendum,[146] and the other in Morraine, a suburb of Dayton, which opposed a moderate-income rental housing project assigned to it under a regional housing plan.[147]

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[146] The city openly admitted that the ordinance's real purpose was to exclude blacks. Horwitz interview, supra note 113.

[147] This suburb was a participant in the Miami Valley Plan whose main goal is the dispersal of low- and moderate-income housing on an equitable basis throughout the region.

The Boston HUD Regional Office also conducted a study which could be called a pattern and practice review.[148] It grew out of hearings[149] which explored blockbusting in the Boston area. HUD staff, in cooperation with the Massachusetts Commission Against Discrimination, investigated practices of real estate brokers in racially changing neighborhoods. The results of the study were never made public. Despite the evidence of Title VIII violations which prompted the study,[150] it resulted in no HUD action against real estate brokers in the Boston area.[151]

HUD, contrary to present practice, should assign a top priority to pattern and practice reviews. If it did, such reviews would have a major impact on discriminatory practices.

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[148] In addition, the San Francisco Regional Office conducted a "community-wide compliance review" of the city of Vallejo, California, in 1972. This review concentrated on Title VI issues rather than Title VIII. (See note 170 infra.)

[149] These hearings were held in September 1971 by the Federal Subcommittee on Anti-trust and Monopoly of the Senate Judiciary Committee.

[150] Senate hearings revealed widespread racial discrimination in the Boston area. For example, in 1969 a coalition of banks had delineated a narrow area as the only area for making FHA loans to "high risk black families." Hearings on Competition in Real Estate and Mortgage Lending Before the Subcomm. on Anti-trust and Monopoly of the Senate Comm. on the Judiciary, Sept. 13-15, 1971.

[151] Interview with Pat Morse, Equal Opportunity Specialist, HUD Regional Office, Boston, Mass., in Boston, Nov. 14, 1972. More information is not available since the HUD report has remained in draft form and its contents were not made available even to this Commission.

2. Administrative Meetings

In November 1972, HUD issued regulations regarding "Fair Housing Administrative Meetings."[152] The purpose of these public meetings, is to identify and publicize discriminatory housing practices within a locality and to "promote and assure" equal housing opportunity. No administrative meetings were held in fiscal year 1973. Two such meetings, however, were held in fiscal year 1974.[153]

These meetings are an important element in HUD's execution of its fair housing responsibilities. Although administrative meetings are informal and do not directly result in negotiations leading to compliance with Title VIII, they can provide impetus for formal HUD investigations, and they would also provide public exposure to discriminatory housing conditions, often an important incentive to local movement for change. It is HUD's responsibility to request the funds that would ensure that it has sufficient staff for the holding of administrative meetings in accordance with its regulations.

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[152] 24 C.F.R. § 106.1 et seq. (1974).

[153] The first administrative meeting dealt with military housing problems and was held in Washington, D.C., in February 1974. The second meeting was in Hartford, Conn., May 15-16, 1974, concerning discrimination in home financing. In addition, HUD plans to hold two more meetings which will concern persons of Spanish speaking background and Native Americans. As of June 1974, the meeting concerning persons of Spanish speaking background was postponed indefinitely. 1974 Holbert interview, supra note 40. This meeting had been scheduled twice and both times was cancelled with little notice.

C. Equal Opportunity Compliance in HUD Programs--Title VI

The HUD central office personnel estimate that 20 percent of equal opportunity staff time both at the central and regional levels is applied to Title VI compliance activity.[154] This time is divided between complaint investigations and compliance reviews of the operations of HUD program recipients.

1. Complaints

As of the beginning of fiscal year 1973, HUD had approximately 200 Title VI complaints on hand. It received a total of 232 additional Title VI complaints between July 1972 and March 1973.[155] The vast majority of complaints were from blacks[156] and usually alleged discrimination by a local housing authority.[157]

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[154] HUD response, supra note 47. Some regional offices estimate, however, that they spend far less of their time on Title VI compliance than 20 percent. The San Francisco office estimated that its staff give between 10 and 15 percent of their time to Title VI. Marvin Smith interview, supra note 89. The Chicago office estimated that only 5 to 10 percent of its staff time was spent on Title VI activity. Higginbotham interview, supra note 83. Regional staff attribute this to the priority placed on the processing of Title VIII complaints.

[155] The regional distribution of Title VI complaints received in Fiscal Year 1973 is as follows: Boston 8; New York 21; Philadelphia 7; Atlanta 28; Chicago 40; Fort Worth 40; Kansas City 64; Denver 3; San Francisco 19; Seattle 2. HUD response, supra note 47.

[156] The following is a breakdown of complainants by racial and ethnic characteristics for complaints received in fiscal year 1973: black 131 (56.5 percent); Spanish speaking background 18 (7.8 percent); nonminority 7 (3.0 percent); American Indian 1 (0.4 percent); Filipino 1 (0.4 percent); and 74 unknown (31.9 percent.) Id.

During the first 9 months of fiscal year 1973, HUD closed 204 Title VI complaints.[158] HUD reports that of those closed, only 27 were cases of noncompliance in which HUD achieved voluntarily compliance.[159] As of the end of March 1973, there was a backlog of more than 200 open cases, that is, a backlog of almost 9 months.[160]

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157. A breakdown of Title VI respondents is as follows: local housing authorities 104; local and city government and city organizations and agencies 40; urban renewal and redevelopment agencies 31; model city agencies 23; developers 13; HUD 7; councils of government 2; resort commission 1; United Businessman Association 1; YMCA 1; Farmers Home Administration 1; manpower commission 1; rental cooperative 1; unknown 6. Id.

158. The regional distribution of Title VI complaint closures is as follows: Boston 14; New York 16; Philadelphia 8; Atlanta 55; Chicago 27; Fort Worth 43; Kansas City 9; Denver 2; San Francisco 21 ; Seattle 9. Id.

159. HUD indicates that the remaining cases were closed for the following reasons: 6 complaints were withdrawn; 77 cases were not valid complaints of discrimination; that is, even if the allegations had been true, they would not have constituted violations of Title VI; in 13 cases HUD found the recipients in compliance and 81 cases were closed for "other" reasons, including cases where HUD "had no jurisdiction," cases which were handled under Title VIII, and other administrative closings. Id.

160. As with Title VIII complaints, HUD's investigation of Title VI complaints appears to have been thorough. HUD central office staff estimate that an average Title VI complaint investigation might involve 40 hours and that an investigation of a complex case might involve 60 to 100 hours. Id. Regional office estimates tended to approach or even exceed the larger figure. The Fort Worth Regional Office estimated that a Title VI complaint takes an average of 3 workweeks for investigation. The San Francisco office estimated 2 workweeks for a Title VI complaint investigation.

Some of these open cases are ones in which HUD has found discrimination but has been unable to achieve voluntary compliance. In these cases HUD has not imposed sanctions but rather continues to rely on protracted negotiations. The Washington office could not provide any information on the number of such complaints.[161] HUD reported that its only information on complaint resolution is that tabulated in the regions[162] on the cases closed. Regional offices report data to Washington in the following categories: achievement of voluntary compliance, no discrimination, withdrawals, and sanctions imposed. Although in November 1974 the central office statistics on the instances of noncompliance in which compliance was not achieved voluntarily, such data were apparently not available in 1973 when the Commission requested such data from HUD. On the other hand, at the time of Commission staff interviews, statistics from HUD field offices maintained in the regions but apparently not reported to Washington, indicated that there were a large number of such cases, which were in fact inactive.[163]

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[161] HUD response, supra note 47.

[162] Id.

[163] The Boston Regional Office records show that as of August 1972, 11 Title VI complaints had been open more than 4 months and 8 for more than 6 months. The Chicago Regional Office had 58 cases open in April 1973. One had been pending for 4 years, 6 for 3 years, 4 for 2 years and 15 for 1 year. The Fort Worth office had 34 Title VI complaints pending as of January 1973, of which 14 had been pending for 8 months. The San Francisco office had 38 Title VI complaints pending as January 1973. Twenty four cases had been open more than 6 months and 6 had been pending for more than a year.

The HUD policy on Title VI complaint investigations encourages compliance reviews, stating that the investigation must address the causative fact which produces the discriminatory act.[164] The extent to which compliance reviews result from complaint investigations is discretionary to the regional offices. All of the regional offices visited by Commission staff sometimes conduct overall compliance reviews of the Title VI recipients at the same time that they investigate individual complaints.

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[164] See HUD Title VI Handbook 8000.3, Chapter 2, Section 1. For example, HUD noted that a site selection complaint might have implications for the operation of a tenant assignment policy by a local housing authority.

The Fort Worth office always conducts a compliance review of the respondent when investigating a Title VI complaint; the San Francisco office expends 40 percent of its complaint investigations into compliance reviews, depending on the issue and the current workload. The Chicago office makes a decision to conduct a compliance review when there is a complaint in which it appears there is a need to investigate more than one issue, when there is a complaint with a large number of allegations, or when a complaint is referred by an area office.

2. Compliance Reviews

Compliance reviews, because they include all aspects of the operation of a HUD-funded agency program, are a far more effective and systematic way of assuring the nondiscriminatory operation of the programs than complaint investigations, which may address only one aspect. However, many regional equal opportunity offices report that they are so understaffed that they are generally able to conduct Title VI compliance reviews only as a byproduct of Title VI complaint investigations.[165] HUD conducted 80 Title VI compliance reviews between July 1972 and March 1973.[166] Forty-nine of the reviews originated from Title VI complaints.

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[165] The Fort Worth office for example, reported that it rarely conducts Title VI compliance reviews which are not based on complaints. The Boston Office has conducted only seven Title VI compliance reviews since July 1971. Four of the seven resulted from Title VI complaint investigations.

HUD reviews have focused principally on local housing authorities,[167] despite evidence of discrimination by other recipients, especially developers of subsidized housing. For example, the Dallas Area Office Equal Opportunity Director stated that the subsidized projects in Dallas are almost totally segregated.[168] Yet few builders and developers of HUD-assisted housing have been the subject of HUD Title VI compliance reviews in Region VI or any other region. The Title VI Handbook contains checklists for compliance reviews of housing authorities, urban renewal and relocation agencies, and community development agencies. It does not include checklists for reviews of developers, builders, and sponsors of subsidized housing.

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[166] HUD response, supra note 47. HUD reported that the Title VI compliance reviews were distributed between regional offices as follows: Boston 2; New York 16; Philadelphia 15; Atlanta 10; Chicago 18; Fort Worth 5; Kansas City 10; Denver none; San Francisco 4; Seattle none.

[167] Fifty-one of the 80 reviews were of local housing authorities The distribution of the other 29 program recipients reviewed was as follows: local city government and city agencies 19; urban renewal agencies 4; model city agencies 2; regional planning agencies 2; developers 1; county governments 1.

[168] Interview with Higginio Elizondo, Director, Equal Opportunity Division, HUD Area Office, Dallas, Tex., in Dallas, Jan. 31, 1973.

In fiscal year 1972, HUD determined that it would first focus on local housing authorities and conduct Title VI communitywide compliance reviews[169] during the third and fourth quarters. HUD set no goals for the number of reviews to be conducted. In fact, few offices conducted communitywide reviews because of their heavy workloads and the length of time and size of staff needed to do such a review. The only office visited by Commission staff which did a communitywide Title VI compliance review was San Francisco.[170]

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169. There is a difference between Title VIII and Title VI communitywide reviews. In Title VIII communitywide reviews, HUD attempts to identify housing discrimination practices and patterns. To do so, it must focus on discrimination in the sale and rental, advertising, and financing of housing, and on the provisions of real estate brokerage services. Thus, this type of review examines things such as coverage of State and local fair housing laws, types and quality of activity conducted by fair housing agencies, zoning ordinances, marketing activities of brokers and builders, mortgage financing practices of lenders, and data showing the racial and ethnic composition of neighborhoods throughout the area. On the other hand, Title VI communitywide reviews are limited only to examining all agencies throughout the area that have programs funded by HUD.

170. The review was done of Vallejo, Cal. in May 1972. The regional office selected Vallejo because several Title VI and Title VIII complaints had been received concerning the housing authority and the redevelopment agency, and because the city has participated in a large number of HUD programs in the last 15 years. Subject to review were the Vallejo Housing Authority, which administers the city's public housing projects; the city redevelopment agency, which administers urban renewal, code enforcement, and neighborhood development programs; the greater Vallejo recreation district, administering HUD's open space and neighborhood facilities grants: the city flood district, which administers HUD's water and sewer grants; and finally, sponsors of five subsidized housing and rent supplement projects. The objective of the review was to examine the administration of all HUD programs in the city and evaluate their impact on increasing housing opportunities for minorities and minority participation in HUD programs. With one exception, HUD found no evidence of discrimination in the various aspects of the programs which it reviewed, e.g., site selection and tenant selection for public and subsidized housing projects; relocation services; services provided to the minority community by water and sewer lines, parks, and neighborhood facilities; dispersal of leased housing units, and city agency employment. The exception was the city government itself, which was severely lacking in the employment of minorities. At the conclusion of the review, HUD made only one recommendation--to increase employment of minorities in city government and increase opportunity for minorities in technical and professional city jobs.

Shortly after the reorganization of the equal opportunity program in April 1972, the central office instructed regional equal opportunity staff to identify Title VI problems with "remedy potential"[171] and to use these to establish priority areas for Title VI compliance activities.[172] Regional staff interviewed by the Commission, however, were apparently often unaware of this directive and stated that the central office had not given them any direction.

In January 1974, 6 months into fiscal year 1974, HUD formally established Title VI compliance review goals for that fiscal year.[173] Up to that time goals had been set only for regional offices to continue to identify "remedy potential" cases. Regional offices themselves did not set rigorous schedules for Title VI compliance reviews.[174] Regional office time, according to the central office, is being used for training.[175] The regional offices thus have very little time left for establishing their own compliance review goals. HUD's central office, which could issue guidelines for the establishment of goals, admits that complaints will undoubtedly continue to play the major role in regional office decisions.[176]

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[171] A HUD central office official defined a problem with "remedy potential" as an instance of possible noncompliance by a funded agency which has a strong financial relationship with HUD. HUD can then use the leverage of its funds to bring about compliance. He also added that the problem must not be too complex so that HUD equal opportunity staff could understand and analyze it without investing an inordinate amount of time in it. 1973 Holbert interview, supra note 127.

[172] Id.

[173] HUD recently stated:

> Title VI compliance review goals for fiscal year 1974 were discussed at the Assistant Regional Administrators' meetings held in August and October of 1973. In January 1974, HUD Regional Offices of Equal Opportunity received a formal memorandum which established Title VI compliance review goals for FY 1974. November 1974 Toote letter, supra note 32.

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[174] Examples which illustrate HUD Regional Office schedules for conducting compliance reviews follow: As of November 1972, the Boston Regional Office had planned only two compliance reviews, both of them as a result of complaints. Neither the Fort Worth nor the San Francisco Regional Offices successfully drafted and executed an overall plan for compliance reviews. There were two reviews initiated by Fort Worth during fiscal year 1973, but these were based on ad hoc recommendations, one from a former HUD employee, and one from the Dallas Area Office. The San Francisco office had planned three reviews but, as of January 1973, had conducted only one. The Chicago office had planned 20 reviews for fiscal year 1973, an ambitious schedule; nonetheless, 12 of these were originally scheduled for fiscal year 1972.

[175] 1973 Holbert interview, supra note 127.

[176] Id.

3. Compliance Agreements

Until March 1, 1973, although the regional equal opportunity offices conducted all complaint investigations and compliance reviews, they did not participate in the negotiations[177] to remedy any deficiencies uncovered. Rather, they made recommendations to the Area Office Directors, who were responsible for negotiating with the respondents. At times the Area Directors ignored the recommendations of the equal opportunity staff.[178]

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[177] An instance which illustrates the problem of the equal opportunity offices' lack of authority in Title VI cases concerns the Cambridge, Mass., Housing Authority (CHA). Equal opportunity staff in the Boston Regional Office conducted a compliance review of the CHA in June 1971, and found it to be out of compliance. They made two major recommendations for bringing the CHA into compliance: that it develop a new plan for assigning prospective tenants to units without regard to race, and that it develop a plan for dispersing its leased housing units outside of existing low-income and minority areas. The Boston Area Director did not press the CHA with regard to developing these plans. After several months, the regional equal opportunity office, which had sought and received the support of the central office equal opportunity office, was able to convince the Area Director to defer the CHA's application for modernization funds in order to hasten compliance. In the end, however, the deferred funds were released due to various pressures on HUD including that from the local Congressman. The case was closed, with CHA agreeing to work on new plans. As of May 21, 1974, no such plans had been completed and the housing authority was still not in compliance with Title VI. Telephone interview with Pat Morse, Equal Opportunity Specialist, Compliance Division, Boston Regional Office, HUD, May 5, 1974.

[178] See Horwitz interview, supra note 113.

In almost one-third (29 of 89) of the compliance reviews conducted by regional office staff between July 1972 and March 1973, HUD program recipients were found to be out of compliance with Title VI requirements.[179] In 13 of the 29 cases, HUD states voluntary compliance was achieved through negotiations between HUD and the program recipient involved.

As with its handling of complaints, HUD sometimes allows noncompliance uncovered in its reviews to continue indefinitely. In the majority of the above cases,voluntary compliance was not achieved and negotiations[180] were still in process months after those interviews were completed. Review of files on some of these cases emphasize that negotiations have been prolonged and point out HUD's lack of action to bring recipients into

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179. The noncomplying recipients were 16 local housing authorities, 3 combination redevelopment and housing authorities, 3 redevelopment and urban renewal authorities, 3 city governments, 2 regional planning and governmental agencies, 1 model city agency, and 1 developer.

180. As of August 9, 1973, the following agencies had not been brought into compliance: Capital Region Planning Agency (Hartford, Conn.); Pawtucket (R.I.) Housing Authority; Portland (Me.) Redevelopment Authority; Charleston (W. Va.) Urban Renewal Authority; Newport News (Va.) Redevelopment and Housing Authority; Danville (Va.) Redevelopment and Housing Authority; Roanoke (Va.) Redevelopment and Housing Authority; Hialeah (Fla.) Housing Authority; Macon (Ga.) Housing Authority; Corinth (Miss.) Housing Authority; Parsons (Kan.) Urban Renewal; Housing Authority of the County of Riverside (Cal.); Kern County (Cal.) Housing Authority; Kennewick (Wash.) Housing Authority; King County (Wash.) Housing Authority; and Alaska State Housing Authority. HUD response, supra note 47.

181. As of Aug. 9, 1973, only the Hartford, Conn., agency had been denied HUD funding. See note 194 infra.

compliance. The Riverside County (California) Housing Authority (RHA) compliance review, for example, was initiated in July 1972 and a final investigation report completed in October 1972.[182] The Regional Administrator forwarded recommendations to the Los Angeles Area Office in mid-November. Since that time, there have been at least two sets of negotiations with the housing authority.

The Kern County (California) Housing Authority, another recipient which HUD has reviewed and found to be in noncompliance in fiscal year 1973,[183] was initially reviewed in August 1971. The file of this case contains correspondence indicating that HUD was attempting to get that housing authority to revise its tenant assignment plan

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182. According to HUD's file of this case, it discovered that the RHA's employment and tenant assignment practices were discriminatory. The percentage of its employees who were minority was not representative of the percentage of minorities in the population; minority employees were in the lower pay scale; the RHA had no recruitment procedures and did not post its vacancies. Further, the RHA did not maintainaa priority list for unit assignments. Its standards for eligibility were arbitrary; it had no system for transfer; and the RHA's housing panel had no minority members.

183. HUD's review of the Kern County Housing Authority showed a continued segregation of its projects.

as long ago as 1967. In June 1972, the regional office referred the case to the Los Angeles Area Office for negotiations. Thus, the compliance review initiated in August 1972 was part of continuing and seemingly endless efforts by HUD to persuade the housing authority to comply voluntarily. The files indicated that there have been no further negotiations between HUD staff and the housing authority since November 1972.

The HUD file on the housing authority in Milwaukee[184] goes back to April 1969. Additional compliance reviews of tenant selection and assignment and of hiring were conducted in December 1970, October 1971, and May 1972. As of August 1972, HUD and the housing authority were continuing to negotiate. In Lake Charles, Louisiana, HUD's file on the housing authority dates back to 1970, with compliance reviews conducted in April 1971 and June 1972.[185] HUD was negotiating as of January 1973, when it wrote to the local chapter of the NAACP to solicit support and assistance in its negotiation.

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[184] 184. The Milwaukee Housing Authority (MHA) discriminated against minorities in its hiring practices. All program managers of the MHA were white and harassed minority tenants. In addition, a preferential tenant assignment policy was in existence.

[185] 185. In 1970, the Lake Charles Housing Authority (LCHA) worked out a tenant selection plan with the regional and central HUD offices for the purpose of desegregating its housing units over a 5-year period. By 1972, two complaints had been filed against LCHA and HUD conducted a compliance review of LCHA in June 1972. HUD found that the plan was not being implemented. HUD then attempted to get the city government and the local NAACP to work with the authority, but as of January 1973, LCHA was still out of compliance.

As of March 1, 1973, HUD shifted responsibility for conciliation efforts under Title VI from the Area Directors to the Assistant Regional Administrators for Equal Opportunity. Regional staff believe that this change has improved HUD's ability to achieve voluntary compliance under Title VI in a reasonable period of time. One reason may be because equal opportunity staff, having conducted the review, are more knowledgeable than program staff about the Title VI issues.

Where noncompliance cannot be achieved by voluntary agreement, HUD staff in several regional offices stated that HUD is reluctant to use its leverage to defer funds as a means of resolving Title VI cases. The HUD central office also stated that deferrals are rare. In some cases where this has been done, however, it has proved to be at least partially effective.

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186. Department of Housing and Urban Development, Handbook 8000.2, Revised Processing Procedures for Title VI Complaints and Compliance Reviews, Mar. 1, 1973.

187. Telephone interviews with Napoleon Dotson, Senior Equal Opportunity Specialist and Assistant to the Director, Division of Compliance and Enforcement, HUD Regional Office, Chicago, Ill., May 2, 1974; Betty Kaufman, Attorney Advisor, General Counsel's Office, HUD Regional Office, Boston, Mass., May 2, 1974; and Harold Odom, Director of Compliance, HUD Regional Office, Dallas, Tex., May 2, 1974.

188. Vera interview, supra note 42; 1973 Odom interview, supra note 101; Jeffers interview, supra note 113; and Horwitz interview, supra note 113.

189. 1973 Holbert interview, supra note 122.

Further, cases in which HUD has deferred funds for noncompliance with Title VI have usually been on a short term basis and funding is frequently resumed before the respondent has agreed to come into compliance.[190] Short term deferrals are not made in all cases, however, and HUD takes no stronger action even where a recipient remains out of compliance after several years of HUD negotiations.[191]

In some instances noncompliance has been found by agencies which have made no further applications for HUD assistance and HUD has taken no action.[192] There are, however, steps HUD could have taken. For example, the case could have been treated as a Title VIII violation, with an attempt at negotiations and a subsequent referral to the Department of Justice if negotiations failed.[193]

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[190] See, for example, the discussion of the Cambridge Housing Authority, *supra* note 177. In addition, the Fort Worth Regional Office deferred funds for modernization and expansion from the Texarkana Housing Authority for several months. The funds were released when the city needed new housing units for families displaced by an irrigation project. As of the Commission interviews in Fort Worth in January 1973, the Texarkana Housing Authority was still out of compliance.

[191] See, for example, the discussion of the Cambridge Housing Authority, *supra* note 177.

[192] As of January 1973, the Equal Opportunity Division in the New Orleans office stated that the housing authorities in Jonesboro, Ponchatoula, and Vivian, La., were being held in noncompliance; but, since these authorities had not made application for HUD assistance, HUD could take no further action.

HUD has never debarred a recipient for noncompliance with Title VI.[194] Until HUD terminates funds for violations of Title VI, it is likely that it will continue to find many of its program recipients out of compliance when it makes Title VI complaint investigations or reviews. The Commission recognizes that this is a difficult sanction to apply. Nevertheless, it is convinced that a Nationwide application of the sanction would constitute an important weapon in a frontal attack on housing discrimination. When Congress provides a weapon of this kind, the Executive branch has an obligation to use it.

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[193] Title VI of the Civil Rights Act of 1964 provides that Title VI compliance by a noncomplying recipient may be effected by one of two means: a) termination of or refusal to grant or continue assistance or b) any other means authorized by law. The latter alternative has included referral to the Department of Justice for suit to end the discriminatory activity. Federal agencies argue that if all assistance is terminated to a recipient, compliance with Title VI has been achieved. Therefore, in cases in which discrimination continues after the cutoff of funds, unless a complaint against the recipient is received, the agency lacks authority to refer to the Department of Justice. Statements by Peter Holmes, Director, Office for Civil Rights, Department of Health, Education, and Welfare, and Robert Dempsey, Chief, Federal Programs Section, Civil Rights Division, Department of Justice, at meeting on public broadcasting, May 7, 1974. Federal agencies can, however, seek out complaints when discrimination continues after the cutoff of funds.

[194] In a 1973 case, the Capital Region Planning Agency of Hartford, Conn., was decertified as an areawide planning agency and denied new HUD funds for planning. Decertified means that a HUD-funded agency did not have its certification renewed. This usually means that the agency does not receive any more HUD funds. Debarment is the termination of funds of an ongoing HUD program. Telephone interview with Joe Vera, Assistant Regional Administrator for Equal Opportunity, HUD Regional Office, Boston, Massachusetts, May 29, 1974.

4. Monitoring Agreements

Despite the deficiencies in having area offices negotiate agreements, some regional offices have reported good settlements with HUD recipients. In the Chicago region, for example, as a result of HUD negotiations with the Decatur, Illinois, Housing Authority (DHA), the housing authority agreed[195] (a) not to undertake a proposed change which would have given high priority to a prospective tenant's ability to pay rent in approving applicants for public housing;[196] and

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[195] In Decatur, Ill., HUD found that blacks and other minorities, i.e., persons of Spanish speaking background, were denied full and equal participation in the programs of the DHA.

[196] One of the significant deficiencies uncovered by HUD was a proposed change which would make a prospective tenant's financial ability the number two priority for living in public housing; it had been priority number seven.

(b) to give all minority applicants consideration for admission to a previously all-white project as vacancies occurred, as a means of correcting apparent past discrimination.[197] Similarly, as a result of negotiations with the Steubenville, Ohio, Metropolitan Planning and Redevelopment Commission (SMPRC), in February 1973, SMPRC agreed to encourage and interest sponsors in the development of low- and moderate-income housing in selected census tract sites.[198]

Agreements such as these, however worthwhile, are generally not monitored. In fact, a significant deficiency in HUD's Title VI complaint program is that, as with Title VIII, HUD fails to monitor the voluntary agreements which it negotiates to bring program recipients into compliance. HUD regional office staff report that little if any followup is being done to assure that Title VI conciliation agreements are being followed.[199] Followup is essential in order to ensure that respondents are complying with Title VI requirements which they have agreed to implement.

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[197] In addition, DHA agreed to generate interest and recruit possible potential minority applicants; to utilize minority and other news media of the city of Decatur to give adequate publicity to the fair housing policies of the DHA and its public housing opportunities; to use community group contacts and any other additional sources to ensure minority participation in the project; and to increase its minority employment.

[198] This agreement was based on HUD's feelings that Steubenville perpetuated concentrations of minority groups; low- and moderate-income housing was not offered in a broad choice of neighborhoods. In addition, SMPRC agreed to seek the cooperation of the Steubenville Metropolitan Housing Authority in identifying areas for the development of low-rent family and elderly housing units and to utilize all Federal categorical and noncategorical grant housing programs to implement this agreement.

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[199] For example, as of November, 1972 the Boston office did no monitoring and required no periodic reports after Title VI conciliations. The Chicago office required reports and kept a "monitoring file." The Director of Compliance in Chicago, however, informed Commission staff that while the records are maintained properly, no monitoring occurred. Higginbotham interview, supra note 83. The Fort Worth office required periodic reporting but has been lax about reviewing the reports. In January 1973, some 20 letters were sent out to Title VI recipients formerly in noncompliance with Title VI, reminding them of reporting requirements, but office files indicate that followup compliance reviews are conducted only on a haphazard basis. 1973 Odom interview, supra note 101.

IV. Equal Opportunity Standards for HUD Programs

During fiscal year 1972, HUD issued equal opportunity regulations and requirements for reviewing applications for HUD funds. They integrated equal opportunity standards with other standards for distributing assistance. This new approach was aimed at ensuring compliance with Title VI prior to HUD's approval of assistance and for furthering compliance with Title VIII.

On January 5, 1973, the administration declared a moratorium on all federally subsidized housing programs. The moratorium has had a severely detrimental effect on minorities. The supply of housing for low-income families has diminished and public housing authorities now have long lists of applications which they are unable to fill.[200] Moreover, this radical change in funding[201] has had a significant effect

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200. On January 31, 1973, leaders from 22 minority group organizations made known to HUD their belief that the moratorium has hurt disadvantaged persons the most. They called on HUD to begin interim housing assistance programs to alleviate the situation. Among the groups represented were the National Urban League, the National Council of La Raza, the Leadership Conference on Civil Rights, the National Council of Negro Women, the National Puerto Rican Forum, and Chicanos Por La Causa. On the same date the National Committee Against Discrimination in Housing (NCDH) also issued a statement criticizing the moratorium for depriving disadvantaged and minority persons of safe, sanitary, and decent housing in communities of their choice. NCDH statement, "The Administration's Housing Moratorium and Budget Message," Jan. 31, 1973. At its annual convention in July 1973, the National Association for the Advancement of Colored People adopted a resolution opposing the housing freeze and calling for the prompt release of impounded funds. See also letter from John A. Buggs, Staff Director, U.S. Commission on Civil Rights, to William A. Barrett, Chairman, Committee on Banking and Currency, U.S. House of Representatives, Oct. 31, 1973. This letter, concerning the proposed Housing Act of 1973, H.R. 10688, discusses the major negative effect of the moratorium on minorities and the poor.

201. The administration suspended new commitments under many of HUD's programs. Specifically, funds under Section 235 of Title I of the Housing and Urban Development Act of 1968 were cut from $40 million in 1973 to zero in the 1974 budget, and funds under Section 236 of the act went from $100 million to zero; rent supplement and new public housing were also suspended; water and sewer facilities grants went from $130 million to zero; model cities from $583 million to zero; open space grants programs, from $47 million to zero; neighborhood facilities grants, from $26 million to zero; and urban renewal was reduced from 1 billion to $138 million. HUD stated that under the 1974 act:

> No new grants and loans can be made after January 1, 1975 for Model Cities, Urban Renewal, neighborhood facilities, water and sewer facilities, or open space and related programs. The section 235 and 236 programs were extended to June 30, 1976. No new funds were provided for the rent supplement program. The public housing statute (U.S. Housing Act of 1937) was rewritten, and includes a new section 8 concerning leasing, without termination date....Local communities, however, will receive community development block grants to replace the previous CD categorical grants and can use the funds for local priorities, but must give maximum feasible priority to activities which will benefit low and moderate-income families or aid in the prevention or elimination of slums or blight. November 1974 Toote letter, supra note 32.

on HUD's equal opportunity program. Implementation of equal opportunity standards and regulations which HUD previously used as major leverage to obtain compliance with the fair housing laws by its program participants became less time-consuming after the moratorium because programs with equal opportunity requirements were sharply curtailed.[202] The moratorium left the area and insuring office equal opportunity staff with few fair housing duties,[203] since the implementation of these requirements had been a major activity.

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[202] HUD recently stated:

> Although approval of new applications declined after January 1973, approved applications continued to be monitored and programs which were in operation continued to be subject to equal opportunity requirements. Id.

[203] HUD recently stated:

> Affirmative marketing, training of HUD and funded agency staff, in-house equal employment opportunity, minority business affirmative action plans pursuant to Executive Order 11246 and Section 3 requirements are some of the responsibilities which Area and Insuring office staff could give more time to as a result of a decline of front-end activity on applications. Id.

Therefore, the central office issued a memorandum[204] outlining HUD's new priorities for equal opportunity activities in the area and insuring offices. The implementation of affirmative marketing plans[205] for unsubsidized housing[206] was given top priority, replacing the emphasis which had been given to other administrative program standards; that is, equal opportunity requirements for HUD programs.

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[204] Memorandum to all Regional Administrators, from Malcolm E. Peabody, Jr., Acting Assistant Secretary for Equal Opportunity, Equal Opportunity Activities in Area and Insuring Offices, Feb. 1, 1973. The memorandum also stated that affirmative marketing plans submitted for unsubsidized units had to be reviewed and that for "plans previously approved, technical assistance to builders and sponsors will be required." In addition, it stressed that monitoring monthly reports to determine progress is important and that the first multifamily project subject to affirmative marketing plans would soon be occupied and would require special attention.

[205] Such plans demonstrate how a builder or developer will market properties to all racial and ethnic groups. They include programs for publicizing the availability of units for minorities, for specifically recruiting minority buyers and tenants, for minority hiring, and for educating the builder's, developer's, or sponsor's staff on their fair housing marketing responsibilities.

[206] HUD's unsubsidized housing programs (see note 4 supra) were not cut by the moratorium.

Despite the decreased emphasis on HUD program standards since the moratorium, this report includes a review of HUD's implementation of its program standards. This study was begun during the first half of fiscal year 1973 when its subsidized programs were in full operation. It is clear, however, that because of the changing nature of HUD's assistance,[207] at the present time HUD cannot rely on program standards as its principal tool for effecting fair housing throughout the country.[208]

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[207] The changing nature of HUD assistance is discussed supra note 201.

[208] Under the Housing and Community Development Act each application for community development block grants must include a housing assistance plan which assesses the housing assistance needs of lower-income persons (including elderly and handicapped persons, large families, and persons displaced or to be displaced). The plan must also indicate the general location of proposed housing for lower-income persons, with the objective of "...promoting greater choice to housing opportunities and avoiding undue concentration of assisted persons ..." There is no mention of avoiding concentrations of minorities. HUD proposes to require that applicants for community development block grants submit:

> ...a summary of a three year community development plan which identifies community development needs....In identifying the needs the applicant shall take into consideration any special needs found to exist in any identifiable segment of the total groups of low-income persons in the community....The phrase any identifiable segment of the total low-income community refers to women, and members of a minority group which includes Negroes, Spanish-Americans, Orientals, American Indians, and other groups normally identified by race, color, or national origin. 39 Fed. Reg. 33488 and 334494 (Sept. 17, 1974).

A. Affirmative Fair Housing Marketing Regulations

HUD's affirmative fair housing marketing regulations became effective February 25, 1972. They required builders, developers, and sponsors applying for participation in HUD housing programs[209] to submit an affirmative marketing plan before their applications are approved.[210] The purpose of the plan is for the builder to "carry out an affirmative program to attract buyers or tenants of all minority and majority groups...."[211] Once the applications are approved, monthly reports must be submitted to HUD on racial and ethnic occupancy of the units. Equal opportunity staff in HUD area and insuring offices are responsible for reviewing and approving all plans submitted to their offices, and for monitoring compliance with the plan.[212]

The regulations' major weakness is that they do not apply to existing FHA-insured or subsidized projects, even though racial and ethnic data collected on existing subsidized multifamily units show extensive segregation. Further, the regulations apply only to HUD-approved housing and not to all housing marketed by builders and developers who submit plans.

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[209] The applications are for participation in FHA subsidized and unsubsidized housing programs. HUD provides subsidies for the development or rehabilitation of subdivisions, multifamily projects, and mobile home parks.

[210] Applicants must submit affirmative marketing plans when they develop five or more dwelling units under the FHA housing program during the year preceding the applications.

[211] 24 C.F.R. § 200.600 (1973).

[212] In insuring offices which lack equal opportunity staff, program staff members are designated this responsibility. They are trained by equal opportunity staff from other offices.

1. Approval of Affirmative Marketing Plans

Each of the area and FHA insuring offices have developed different methods of administering the affirmative marketing regulations. The Boston Area Office received approximately 80 affirmative marketing plans monthly.[213] The area equal opportunity staff spent 3 to 4 hours reviewing each plan and found that the majority did not meet HUD's standards. Generally, applicants did not clearly understand what was required in the plans. For example, they often failed to explain in detail how they would publicize the units to minorities or what methods they would use to evaluate their staff on their execution of affirmative marketing regulations responsibilities.[214] In October 1972, HUD held a workshop with members of the real estate industry in the Boston area to remedy this problem.[215]

The Chicago Area Office receives an average of 10 to 20 affirmative marketing plans per month.[216] In February 1972, as soon as the regulations were issued, the Chicago area equal opportunity office held meetings with contractors, developers, and builders in Illinois to explain the HUD affirmative marketing and affirmative action requirements. In addition, they met with representatives of city governments and other public agencies to familiarize them with all of the HUD equal opportunity requirements. As of May 1973, approximately half of the plans submitted were approved on the first submission. Nonetheless, the area equal opportunity staff stated that they believe that the builders understand what is expected and attempt to have acceptable plans to expedite the processing of their applications.[217]

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[213] This office was visited by Commission staff prior to the housing moratorium; therefore, the number of affirmative marketing plans have probably dropped drastically. This was the case in other offices reviewed after the moratorium on subsidized housing was declared by the President.

[214] Interview with Charles Harlesten, Director, HUD Area Equal Opportunity Office, Boston, Mass. in Boston, Nov. 15, 1972.

[215] At the time of Commission interviews in Boston (November 1972), only a few plans had been submitted following that workshop, and thus the Commission staff could not evaluate the result of this technical assistance.

[216] This was the last office visited by Commission staff and the moratorium on subsidized housing had been in effect for 5 months. The equal opportunity staff stated that there had been a decrease in affirmative marketing plans because of the moratorium.

The New Orleans Area Office had been unable to give affirmative marketing plans the attention necessary. After the regulations were issued, approximately 700 plans were submitted within a 2-month period. Nearly half of the plans were initially unacceptable to HUD, and the office was not prepared in terms of staffing and expertise to give the builders technical assistance in developing adequate plans. Consequently, the equal opportunity director admits that a large number of the plans that were approved did not meet the HUD standards.[218] He also stated that monitoring was not being conducted by his staff.[219]

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[217] Thompson interview, supra note 42. This was the only area office visited by the Commission staff that believes builders understand the requirements of the affirmative marketing plan.

[218] Interview with M.J. Bordelon, Director, HUD Area Equal Opportunity Office, New Orleans, La., in New Orleans, Feb. 5, 1973.

[219] Id.

Both the San Francisco and Los Angeles Area Offices had been receiving approximately 100 affirmative marketing plans per month.[220] Area equal opportunity staff stated that initially nearly half the builders' plans were unacceptable at first submittal, and some were rejected up to four times before they were adequate.[221]

In the San Francisco Area Office, affirmative marketing regulations are handled by the program staff, and equal opportunity staff do not generally deal with builders. The equal opportunity staff, however, had developed a checklist to be used by program representatives to determine if a builder needs special assistance in preparing an approvable plan. Program staff are thus responsible for contacting builders, giving them assistance in improving plans, and transmitting the plans to the equal opportunity office for a final review.

When the regulations were first issued, the San Francisco equal opportunity staff held a series of eight seminars to explain the regulations to builders. In addition, 2 hours a week are set aside to give the builders technical assistance followup. In Los Angeles too, equal opportunity staff met with the builders and explained the requirements to them.[222]

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220. Staff in both offices stated that this number had dropped considerably since the moratorium on subsidized housing programs.

221. The most common deficiencies were the lack of adequate minority outreach and advertising programs and failure to establish adequate minority occupancy levels for the projects.

222. In Los Angeles, unlike San Francisco, equal opportunity staff handle the affirmative marketing process.

The Dallas Area Office's equal opportunity staff, in conjunction with the HUD equal opportunity staff in Washington, worked with the builders in the Dallas area to develop an industrywide affirmative marketing plan.[223] Instead of each builder's submitting to the area office a new plan with every application under Federal Housing Administration programs, 35 major Dallas builders[224] agreed in November 1972 to implement one plan which would be applicable to all of them.[225] In theory this would have expedited processing of applications, since all major builders are obligated under the plan to meet all of HUD's requirements and do not have to submit individual plans when they submit applications. Thus, since only one plan must be reviewed the equal opportunity staff has more time to review applications thoroughly and monitor builders to ensure they are complying with HUD requirements. This also provides equal opportunity staff with more time to provide technical assistance to builders.

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[223] HUD's Equal Opportunity Office began to negotiate voluntary affirmative marketing agreements in an attempt to eliminate the dual housing market. In fiscal year 1974 it had a goal of 30 affirmative marketing agreements, but only 13 were executed due to the inadequate size of control office staff. Dr. Toote further indicated that 9 agreements were in final stages of negotiation. September 1974 Toote letter, supra note 32.

[224] These builders account for 90 to 95 percent of new housing production in Dallas, according to the Dallas area equal opportunity director.

[225] The Dallas plan covers all residential housing developed by the builders' group in the Dallas metropolitan area, including conventionally-financed housing as well as housing developed or marketed under FHA or Veterans Administration housing programs. The objectives of the plan are: (a) to increase substantially the number of minority families residing in neighborhoods outside areas of predominant minority concentration, through advertising and other methods intended to inform minority families in the Dallas metropolitan area that all housing developed by the builder group is available to them on an equal basis; and (b) to inform the Dallas general public that, in terms of equal housing, the Dallas metropolitan area is an open community.

On paper the Dallas plan is much more far-reaching than what is required by HUD's regulations, thus potentially increasing its effectiveness. For example, the builders' plan covers all housing developed by them, not just housing developed under FHA programs.[226] In addition, the advertising campaign is much stronger than that required by HUD; e.g., it provides for advertising on billboards and displaying the fair housing logotype (see Figure 1)[227] in the industry-sponsored "New Homes" section of the Sunday newspaper. The plan also established a "Community Resource Board" composed of representatives of the minority community to obtain their input in order to accomplish the goals of the plan.[228] Further, the builders' group is responsible for assisting in employee training.

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226. Under the Dallas plan each builder is responsible for special outreach efforts to encourage nonminorities to move into any developments located in racially-mixed areas or minority areas. The builder must also maintain a nondiscriminatory policy in company hiring practices as required by Federal laws, affirmatively seek to hire qualified members of minority groups for staff positions engaged in the sale or rental of properties, and designate an official of the company as equal opportunity officer. Finally, the builder must institute informal and formal training programs for all employees, especially employees who will sell to the general public, in order to sensitize the employees to the needs and best method of dealing with prospective minority buyers, and to carefully and positively delineate management's policy of open housing and fair marketing for all people. The builder does not, however, have to develop a plan outlining how these steps will be taken and there is no system for monitoring whether or not they are accomplished.

227. The equal housing opportunity logotype is an often-used symbol, signifying nondiscriminatory housing practices by the displayer.

228. The builders' group is supposed to meet with the resource board on a regular basis for the purpose of informing the board of its efforts to implement the plan and to draw on the experience of the board to assist in accomplishing the goals of the plan and in solving any specific problems that may arise.

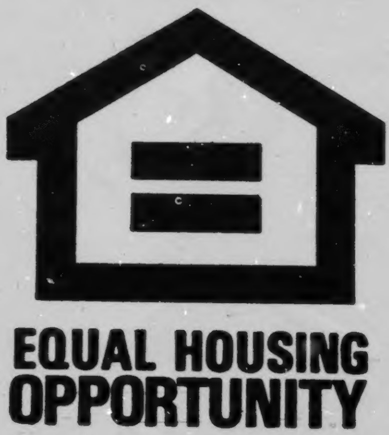
EQUAL HOUSING
OPPORTUNITY

Figure 1. The Equal Housing Opportunity Logotype

The plan does not contain any specific requirements to meet the needs of the Spanish speaking community even though more than 40 percent of the minority population in the Dallas area is of Spanish speaking background. It does not require, for example, that advertisements be in Spanish, that persons of Spanish speaking background be on the Community Resource Board, or that Spanish speaking persons be hired for staff positions by companies engaged in the sale or rental of properties.

In August 1973, the central office was evaluating the impact of the Dallas agreement but as of April 1974 had not produced a report or even reached any conclusions. HUD, however, continues to encourage builders and realtors in other areas to adopt such plans.[229]

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[229] There is one notable exception to HUD's general pattern of encouragement. When the Chicago Area Office attempted to negotiate an industrywide affirmative marketing plan with the Chicago Homebuilders Association, the central office rejected it because it contained contract compliance requirements which it feels fall under the jurisdiction of the Department of Labor's Office of Federal Contract Compliance. Additionally, the central office felt that the moratorium on subsidized housing programs decreased the volume of business with builders to a level where an industrywide affirmative marketing plan was not necessary. HUD response, supra note 47 . The Building Contractors Association of San Diego, Cal., representing major builders in San Diego, entered into a voluntary affirmative marketing agreement with HUD during April 1973.

2. Monitoring Affirmative Marketing Plans

HUD reports that it has provided the field offices guidance regarding monitoring of the affirmative marketing plans: in January 1973 it published Clarifications of Issues: Statement of Policy,[230] a list of questions and answers concerning the plans. For the most part, however, this new guidance does not directly pertain to fair housing. For example, it gives instruction concerning methodology for drafting industrywide marketing plans, such as the one in Dallas. It also provides instructions for submission of plans when builders request approval for housing one unit at a time, often at scattered locations,[231] and for HUD submission of its approval of a plan to the applicants.[232] Clarifications of Issues provides only limited guidance on monitoring techniques. HUD staff are required to check newspapers at the time the housing in question goes on the market. They must compare monthly reports against anticipated results; i.e., the projected racial and ethnic composition of the subdivision once the lots have been sold.[233]

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[230] 38 Fed. Reg. 1136 (Jan. 9, 1973).

[231] The regulations require plans to be submitted when a builder or developer requests approval of five or more houses annually.

[232] It suggests that HUD stamp "approved" on the last page of the plan, sign it, date it, and forward a copy to the applicant.

[233] Each affirmative marketing plan must contain "anticipated results."

Clearly, the most important determination to be made through monitoring is the extent to which anticipated results have been met. No matter how much advertising has taken place, if racial and ethnic minorities are not purchasing homes in the subdivision, the plan being reviewed is not successful and the marketing and sales techniques being used will warrant careful scrutiny.

HUD, however, has supplied no adequate criteria for how these anticipated results must be set by the builder or developer. HUD field staff, as well as builders, developers, and real estate agents, thus, may not know how to identify realistically the population to which homes should be sold or how to assess the racial and ethnic composition of that population. Clarifications of Issues does not remedy this problem. It states only that anticipated results "must be a number or a percentage" and that "general statements about racial inclusiveness or nondiscrimination are not acceptable."

In addition to the techniques suggested by the central office, field offices have developed their own innovative procedures for evaluation and monitoring of affirmative marketing plans. For example, the San Francisco Area Office, unlike most of the other area and insuring offices visited by Commission staff, has begun to utilize private fair housing groups for monitoring.[234] Since June 1972,

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234. These groups include the National Committee Against Discrimination in Housing in San Francisco, the Mid-Penisula Urban Coalition in Palo Alto, and the Lafayette Council for Civic Unity in the East Bay Area, San Francisco, Cal.

HUD officials in San Francisco have met on several occasions with these groups to explain the requirements and type of monitoring needed.[235] Then in the fall of 1972, each of the groups was assigned 6 to 12 projects to monitor. Equal opportunity staff state that they are in constant contact with the volunteer groups, which are also required to submit monthly progress reports. Since they began monitoring, recommendations have been made for compliance reviews of four developers concerning such matters as failure to display the HUD equal opportunity logo and posters, failure to achieve minority occupancy goals, and failure to familiarize staff with their fair housing responsibilities.[236] The diligent efforts of these groups, however, may be somewhat wasted. HUD conducted only one compliance review in that region.

The Los Angeles Area Office's monitoring program has not been as broad as the one in San Francisco. The equal opportunity staff has only worked with one fair housing group, the Fair Housing Council of the San Fernando Valley, which has closely monitored fair housing advertising and use of

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[235] Such monitoring includes checking on advertising, contacting the builders' designated community contacts, checking on the minority occupancy level of projects, reviewing the racial and ethnic composition of marketing staffs, evaluating the effectiveness of the builders' affirmative recruitment plan, and evaluating the general "climate" of the project to see if it "reflects a harmonious relationship" between management and occupants.

[236] In one instance, in Pittsburg, Cal., the regional compliance staff initiated a compliance review of a builder and, as of April 24, 1973, had progressed to the point of presenting allegations of noncompliance with the plan to the builder.

HUD posters by builders.[237] As of March 1973, the equal opportunity staff had only begun to receive monthly sales and occupancy reports submitted by builders in February and March 1973.

In Chicago, equal opportunity staff monitor compliance by checking newspapers every other week to ensure the use of the logotype and slogans in advertising. They found that compliance has been good in this respect. As of May 1973 the monthly occupancy reports required in the affirmative marketing plans were carefully reviewed, but it was too early to draw any concrete conclusions.

HUD staff are not required to conduct onsite reviews of affirmative marketing plans. As a result, HUD reports that by August 9, 1973, only 17 compliance reviews of affirmative marketing plans of eight builders had been conducted in three HUD regional offices.[238] Six of the reviewed builders and developers were found to be out of compliance with their plans.

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[237] If inadequacies in advertising or use of posters are found, they are reported to the area equal opportunity director. The director of the fair housing group stated that HUD has been quick to respond to these calls, always contacting the builders, who generally comply. Interview with Cecilia Zager, Director, Fair Housing Council of the San Fernando Valley, Sherman Oaks, Cal., in Sherman Oaks, Mar. 28, 1973.

[238] The three HUD regional offices which have conducted compliance reviews are Chicago--Region V, Atlanta--Region IV, and San Francisco--Region IX.

Region IV (Atlanta) has conducted five compliance reviews. Two were initiated following receipt of complaints under Title VII. Three were conducted based on requests made by area office equal opportunity staff. Four instances of noncompliance were found. One case was settled by means of written conciliation, which included additional affirmative marketing requirements and reporting which were not part of the developer's original plan. In another case, the builder had an approved plan but had done no subsequent subdivision development pursuant to the plan. Therefore, HUD closed the case without action.[239]

Region V (Chicago) conducted 10 compliance reviews on projects constructed and/or sponsored by a single builder.[240] In one instance, the builder was found in compliance, and one other case has yet to be determined.[241] An additional review, made in March 1973, in conjunction with a Title VIII case, resulted in a finding of compliance with the affirmative fair housing marketing regulations.[242]

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239. The other three cases, which were waiting for conference in which the builders were to show cause why enforcement proceeding should not be initiated, were conciliated. 1974 Holbert interview, supra note 40. Mr. Holbert did not have any information as to the stipulations of the agreements.

240. The builder was National Homes. Each review was done by one regional compliance staff person and one equal opportunity staff person from the relevant area or insuring office. A large number of violations were uncovered and used by HUD in conjunction with the Department of Justice to negotiate a nationwide consent decree by National Homes which was filed on May 11, 1973.

241. The other eight cases of noncompliance were conciliated. The HUD central office staff, however, did not know the content of the conciliation agreement. 1974 Holbert interview, supra note 40.

242. HUD response, supra note 47.

Finally, Region IX conducted a compliance review of a builder-developer who operated under an affirmative fair housing marketing plan. However, the review was limited to one project covered by the affirmative fair housing marketing regulations. The result of the review was a finding of noncompliance. A conference, therefore, "was held to give the builder an opportunity to show cause why enforcement proceedings under the applicable regulations should not be initiated against the company."[243] The builder came into compliance within a designated 30-day period as required by HUD.

It is not effective to obtain affirmative fair housing marketing plans from builders without monitoring the plans to assure that they are actually being carried out. However, HUD has not yet devoted sufficient time and staff to monitoring of affirmative marketing plans. The HUD central office has indicated that most regional offices plan to begin full-scale compliance reviews of affirmative marketing plans.[244] However, the HUD central office places priority on Title VIII complaint investigations and the regional offices believe that they lack compliance staff even to process those complaints.[245] This makes it doubtful that affirmative marketing plan reviews will actually be conducted on a wide scale without specific central office directions[246] and, indeed, as of May 3,

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[243] Id.

[244] 1973 Holbert interview, supra note 127.

[245] See p. 38 supra.

[246] For example, the Chicago Regional Office has received approximately 50 requests for compliance reviews from the area and insuring office equal opportunity staff since the fall of 1972 which it has not fulfilled.

1974, HUD had not conducted affirmative marketing plan reviews on a large scale.[247]

Over 2 years have transpired since the issurance of the regulations, and yet HUD has insufficient data available to conduct an evaluation of the impact the regulations have had on racial and ethnic occupancy of HUD-assisted projects nationwide.[248] It appears that this is enough time for an evaluation to be conducted in order to obtain an indication of the regulation's success, as in many cases the housing units have already been sold.[249]

Although the field offices have not conducted any formal evaluation of the plans, the area and insuring office equal opportunity staff have reached some conclusions on the effect of the affirmative fair housing marketing regulations. Based on the receipt of monthly reports and their observations of the utilization of the equal opportunity logotype and other outreach efforts by builders, they have determined that the use of the logotype in advertising is widespread and has been adopted by many non-FHA builders and by many builders for all their housing, FHA and conventional. HUD equal opportunity staff states that there is greater geographic dispersal of minorities buying new housing.[250]

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[247] Telephone interviews with Mary Walkerson, Assistant to the Assistant Regional Administrator for Equal Opportunity, HUD Regional Office, Chicago, Ill., May 3, 1974, and Higginio Elizondo, Director, Equal Opportunity Division, HUD Area Office, Dallas, Tex., May 3, 1974.

[248] The first monthly occupancy reports were beginning to be received in August 1973 by regional and area offices. Copies of the final reports were subsequently forwarded to the central office for evaluation.

[249] HUD has contracted for two different research projects concerning affirmative markerting, both to be conducted during fiscal year 1975. One will examine plans and results in 8 or 9 area offices to determine if any plans are successful, and if so, why and to develope a manual based on it findings. The second project will evaluate the climate in 10 to 15 cities where developers and sponsors have been required to submit affirmative marketing plans. This study will also analyze data on the use of advertising guidelines. September 1974 Toote letter, supra note 82.

[250] HUD response, supra note 47.

HUD interprets these preliminary findings as indicating that minorities have more options from which to choose. Nonetheless, HUD also reports that the total number of minorities moving into nonminority neighborhoods is not great,[251] thus indicating that there may be a greater number of areas in which minority homes are concentrated but that minority families still do not generally have the option of moving into nonminority neighborhoods. HUD's belief that affirmative marketing plans are already operating to the advantage of minorities appears to be premature. Moreover, HUD has not reflected the commitment to the program which would result in its investigating the possibility of the development of sound alternatives for increasing the housing options of minorities. HUD does not yet know if it must, for example, require stronger affirmative marketing plans, provide increased technical assistance to builders and developers, and/or conduct more systematic and comprehensive onsite reviews.

B. Broker Certification

HUD and the Veterans Administration in March 1973 agreed to require joint certification of management and sales brokers dealing with FHA-acquired properties,[252] since in many instances the two agencies deal with the same brokers.[253] As of June 1973, however, HUD's central office had not made some basic decisions about how the certification would be handled; for example, it did not know if its current brokers were required to sign the new certification or if it would be applied only to new brokers.[254] The certification clearly applies to the sale of FHA-acquired properties, but HUD had not determined whether to require brokers to market affirmatively all of their properties.[255] Further, HUD had not decided to bar brokers from participation in HUD programs if they refused to sign the certification. It planned to remove the brokers from its rosters but had not made provisions for refusing all sales offers from such brokers.[256]

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[251] HUD response, supra note 47.

[252] For more information see Chapter 3, Veterans Administration, infra.

[253] Under this procedure, management and sales brokers must certify that they will not act in violation of Title VIII of the Civil Rights Acts of 1968 or Executive Order 11063. The broker must further agree that a) his or her staff will be instructed in policies of nondiscrimination; b) the fair housing poster will be prominently displayed; c) the logo will be used in all advertising; d) minority media will be utilized in the sale of any properties; and e) a nondiscriminatory housing policy will be maintained.

Further, as of June 1973 there had been no instruction or training afforded to the equal opportunity field staff for implementing the certification. As a result, although a requirement of the program is that area and insuring offices' equal opportunity staff will monitor compliance, many of the field offices had not implemented the program. VA, on the other hand, had acted more expeditiously and had provided its field offices with full instructions for the implementation of the new certification requirement. When VA observed HUD's inaction, however, VA also determined not to implement the certification requirement. Brokers who failed to sign the requirement were not terminated from participation in VA programs.

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254. Interview with Laurence D. Pearl, Director, Office of Program Standards and Analysis, and Nancy Chisholm, Chief, Program Standards, Office of Equal Opportunity, HUD, June 13, 1973. The VA intended to require this certification of all of its brokers. See Chapter 3, Veterans Administration, *infra*.

255. VA on the other hand required that a broker affirmatively market not only VA-acquired properties but all properties in order to qualify for participation in VA programs.

256. VA had determined that builders who did not sign the certification would be ineligible to sell any VA-acquired properties.

C. Other Program Standards

There are four other HUD program standards upon which HUD has placed major emphasis: project selection criteria, project selection in community development, comprehensive planning assistance, and workable programs.

1. Project Selection Criteria

In January 1972 HUD issued a set of eight project selection criteria to be used in rating applications for participation in subsidized housing. A major purpose for the development of these criteria was to implement Title VIII of the 1968 Civil Rights Act, which requires the Secretary to administer the programs relating to housing and urban development in a manner affirmatively to further the policies of this title.[257] Four of these criteria[258] concerned the impact of proposed projects on minorities and low- and moderate-income families, with the main objective being that subsidized and public housing projects will be constructed on locations outside areas of existing minority and poverty concentrations. The proposed project must: (1) serve urgent unmet needs for low-income housing; (2) widen the range of housing locations available to minority families;[259] (3) not contribute to the concentration of subsidized housing in any one section of a metropolitan area; and (4) have potential for creating minority employment and business opportunities. For each criterion, a housing proposal receives a rating of superior, adequate, or poor. A proposal receiving a poor rating on any one criterion is rejected.

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[257] U.S. Department of Housing and Urban Development, Implementation of HUD Project Selection Criteria for Subsidized Housing. An Evaluation (1972).

[258] In addition to these equal opportunity considerations, there are four other criteria. the environmental impact, the relationship to metropolitan planning, the ability of the applicant to perform efficiently, and the provision of sound housing management.

[259] For a critique of these first two criteria see, D.O. Maxwell, "HUD's Project Selection Criteria - A Cure for Impermissible Color Blindness?" 48 Notre Dame Law. 92 (1972).

2. Project Selection For Community Development

Applicants for most of HUD's major community development programs[260] are required to demonstrate that they are expanding housing opportunities for minorities and low- and moderate-income families and that they will provide adequate minority employment and entrepreneurship opportunities. Title VI assurances, as well as maps and other materials submitted with the application, must provide proof of the applicant's intended equal opportunity program.

The one program which does not have to meet such criteria is the program for water and sewer grants, which has no fair housing requirement. It is of particular importance that regulations for evaluation of water and sewer applications should also have equal housing opportunity requirements, since many communities which apply for such programs often lack fair housing legislation and often have exclusionary land-use policies.[261]

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[260] These community development programs include HUD's open space, neighborhood facilities, and public facilities programs.

[261] See U.S. Commission on Civil Rights, The Federal Civil Rights Enforcement Effort--1974--Federal Programs (in preparation).

3. Comprehensive Planning Assistance (701)[262]

There are four basic equal opportunity requirements in the 701 program.[263] First, recipients[264] must ensure that there is adequate representation of minorities and women on the staff of the planning body. Second, policy and advisory groups must contain representatives of major areawide citizen interest groups, including minorities and low-income persons. Third, the grantee is encouraged to utilize minority consultants, deposit grant funds in minority owned banks, and assure equal employment and contracting opportunity on the part of third-party contractors. Fourth, a work program is required from each applicant to assure that a suitable supply of housing to meet the present and projected need is provided and marketed on a non-discriminatory basis. The written work program should include a description of:

> activities which will contribute to correcting effects of past discrimination and the manner in which they will do so, and describe how those activities will benefit residents of the planning area on a non-discriminatory basis. 265

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262. 40 U.S.C. § 8461 (1970), as amended, 40 U.S.C. § 461 (Supp. II, 1972).

263. Section 701, Comprehensive Planning Assistance, is unaffected by HUD's housing moratorium.

264. Recipients of the 701 program include States, cities, regional and/or planning agencies and other applicants, such as interstate regional planning commissions, tribal planning councils, local development districts, and economic development districts. The purposes of the 701 program are to improve executive planning, decisionmaking, and management capabilities; to assist communities in planning for community development and urban and rural growth; and to encourage community planning and management as a continuous process.

265. Memorandum from Samuel C. Jackson, Assistant Secretary for Community Planning and Management, and Malcolm E. Peabody, Assistant Secretary for Equal Opportunity, to all Regional Administrators, Field Office Guidelines, Equal Opportunity in the Comprehensive Planning Assistance Program (701), Jan. 24, 1973.

4. Workable Program

Communities applying for urban renewal and related development grants and loans must first file for a workable program certification.[266] As part of the certification process, before funding can be provided, the locality applying for a grant must demonstrate that it will expand its low- and moderate-income housing and that it will eliminate discriminatory housing practices.[267] The actions which HUD looks at in a workable program submission are the passage or strengthening of a local fair housing ordinance, allocating (or increasing) staff or budget for fair housing enforcement, and dispersal of subsidized housing throughout the locality. In addition, the workable program must show that planning and programming of community facilities and services are equitable in that minority persons benefit from the program in relation to the intensity of their needs. Finally, a locality must submit a program for expanding the supply of low- and moderate-income housing.

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266. This is a 2-year certification subject to midterm review. The workable program describes viable plans in that 2-year period for the development of the area, for example, in expanding water and sewer facilities, orbuilding replacement housing.

267. The fair housing requirements for workable programs were added in December 1971.

5. Implementation of Program Standards

In order to implement HUD's various program standards, in January 1973 HUD issued guidelines for the selective review of applications for HUD's assistance.[268] Under these guidelines, area office program staff retain responsibility for reviewing applications for assistance.[269] The area equal opportunity staff are responsible for deciding which applications they will review.[270] They may choose to have equal opportunity staff conduct the reviews or may decide to establish a system through which equal opportunity input will be handled by other program staff.

In all offices, regardless of whether equal opportunity reviews are conducted by the equal opportunity or the program staff, the equal opportunity staff decides which programs are to be selected for review. All applications received by the area or insuring office are routed to the equal opportunity division for such a decision. The central office has instructed the equal opportunity staff to base the decision for

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268. U.S. Department of Housing and Urban Development, Selective Review Guidelines to Field Offices, January 1973. These guidelines will be incorporated into one chapter of a consolidated one-piece HUD issuance on equal opportunity responsibilities and operations in field offices.

269. Equal opportunity staff decide which programs and which communities will be selected. November 1974 Toote letter, supra note 32.

270. HUD, Selective Review Guidelines, supra note 268.

selective review "upon considerations of a community's urban, social, racial, employment and housing problems as well as its short-range or long-range goals to which HUD and other Federal programs relate."[271] HUD also states that other deciding factors which are to be taken into account are requests for review by program staff, past practices of noncompliance with equal opportunity requirements, complaints or lawsuits concerning discrimination, a high degree of local community tension or public controversy on civil rights problems, and indications of equal opportunity problems from local minority groups, citizens, or organizations.

As of mid-1973, the HUD central office had completed only one evaluation of the implementation of program standards. From June to December 1972, the central office in conjunction with the 10 regional offices visited 25 area and insuring offices to analyze field office procedures in administering the project selection criteria.[272] One of the issues examined was the involvement of equal opportunity staff.

HUD's evaluation revealed that in 15 of the offices analyzed the equal opportunity staff reviewed the equal opportunity criteria for all proposals. About half of the proposals were reviewed by equal opportunity

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271. Id.

272. HUD, Implementation of HUD Project Selection Criteria for Subsidized Housing: An Evaluation, supra note 257. This report does not list the cities reviewed.

staff in two other offices. In four offices, all ratings are made by the chief underwriter who is the program manager, and in two cases by the multifamily housing representative. The absence of equal opportunity staff during the evaluation accounts for the lack of equal opportunity review in one office.[273] Overall, however, the evaluation was uninformative. It showed little about actual implementation of the civil rights criteria.[274]

Equal opportunity staff in the field offices visited by Commission staff executed their responsibilities in different, and frequently innovative, manners. For example, HUD area offices are allocated funds on a periodic basis and the Boston Area Office[275] staff take advantage of this and "batch" subsidized housing applications in order to make comparisons among them. This is an excellent system, since it provides the equal opportunity staff with the opportunity to recommend only those applications which best meet the program standards.

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[273] One other office reviewed was in San Juan, P.R., where the equal opportunity staff is not involved in evaluating project selection criteria because the area office director and staff have determined there are no minorities in Puerto Rico.

[274] Many of the findings were descriptive rather than evaluative. For example, the report indicated that of 3,176 proposals, 1,446 were given a superior rating on the minority housing criteria because they provided opportunities for minority housing outside existing areas of minority concentration. The report did not attempt to determine whether the judgment of the staff making these ratings could be independently verified. Further, the report did not attempt to determine whether the funded housing, when occupied, filled minority needs as it promised at the time of application.

[275] In the Boston Area Office the equal opportunity staff developed a system whereby it has input into the program standards and reviews, by having one of its members as part of a team which reviews all applications every 3 or 4 months. The team includes program staff, equal opportunity staff, and the area economist.

In Dallas, New Orleans, and Fort Worth[276] nearly every review includes an onsite visit.[277] Equal opportunity staff initiated this practice because they felt they were not sufficiently well acquainted with most localities in their jurisdiction to approve or disapprove a site without first visiting it.

In some cases, because of the discretion left to area and insuring office staff, HUD fails to implement one or more program standards. For example, staff in the Chicago area office have failed to develop an adequate system for reviewing project selection criteria. As of May 1973 equal opportunity staff had not devised a review system, and program staff had excluded equal opportunity staff from full participation.[278] The blame for inaction falls on both the equal opportunity and program staffs. Although due to the housing

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276. In this region, VI, equal opportunity staff review all subsidized housing applications, making recommendations to the program staff about which projects should be funded. The Fort Worth office at the time of the Commission's interviews had only received three applications since October 1972. The New Orleans equal opportunity staff estimates they receive 10 to 12 applications monthly and that applications for multifamily projects will often propose two or three possible sites. The Dallas Area Office reviews approximately the same amount of applicants as New Orleans. In all three offices, the applications are automatically forwarded to the equal opportunity staff for their recommendations on the criteria which they are required to review.

277. In the New Orleans Area Office onsite visits are not usually made for sites in New Orleans or Shreveport, unless controversy is involved, because equal opportunity staff believe they are adequately familiar with these cities.

278. Thompson interview, _supra_ note 42.

moratorium,[279] housing project selection criteria are no longer a HUD responsibility, such lack of coordination between equal opportunity and program staff can cause significant problems in the execution of fair housing policies.

Similarly, the Boston Area Office does not use HUD's workable program standards in determining whether certification should be awarded. It is the opinion of the operations division, which handles funding of all HUD applications, that the workable program requirements are too general to be effective and that it is better to stress the equal opportunity standards for specific programs.[280] The Boston Area Office's equal opportunity staff, therefore, have failed even to establish a system for reviewing workable programs or for discovering localities that are due for recertifications, thus relinquishing an effective lever for encouraging communities to eliminate discriminatory practices.

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279. See p. 71 supra.

280. Interview with Marvin Siflinger, Director. Operations Division, HUD Area Office, Boston, Mass., in Boston, Nov. 15, 1972. These include, for example, the project selection criteria for community development.

HUD's implementation of its program standards has also suffered from lack of adequate guidelines. Although the equal opportuntiy requirements for HUD's comprehensive planning assistance program (701) were set in February 1972, it was not until January 1973 that the central office issued guidelines[281] to assist the field offices in their implementation of the 701 equal opportunity requirements.

The guidelines suggest that each area office establish and maintain equal opportunity information based on grantee and staff inputs concerning such matters as staffing, policy body composition, and political and social characteristics of each area. Such information would be used by area offices to assist grantees and evaluate their equal opportunity performance. These guidelines are vague, however, and do not require area offices to perform an analysis in major metropolitan areas of the obstacles to equal housing[282] opportunity and to the greater dispersal of low- and moderate-income housing. Area offices are not required to collect data on the number and geographic location of the racial and ethnic minorities in major metropolitan areas. There is no requirement for an analysis of the housing market[283] or the collection of any economic data, such as on income or employment patterns. Further, no such analyses are performed by HUD.[284]

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[281] Jackson and Peabody memorandum, supra note 265.

[282] Such an analysis would include, for example, reviews of zoning ordinances to identify any which tend to be exclusionary, of State and local fair housing laws to determine the adequacy of their coverage, and of State and local fair housing agencies to assess their effectiveness.

HUD's 701 guidelines instruct the area offices to set up a monitoring system for 701 applications. This monitoring should include onsite visits to review grantee performance. The area offices have failed to establish reliable monitoring systems and only the Director of the New Orleans Area Equal Opportunity Office has made

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283. HUD's recently informed this Commission that it:

> ...currently has under contract with the Washington Center for Metropolitan Studies the development of a minority housing market analysis model that will, when completed, enable HUD field offices to make highly sophisticated estimates, for any given year and market area, of potential housing market demand for Black and Spanish-speaking homeseekers. The contract will also provide this analysis for six large metropolitan areas. November 1974 Toote letter, supra note 32.

284. This equal opportunity information is needed and could be utilized by many agencies, groups, and organizations in carrying out their work programs. The information could be compiled by HUD and made available to applicants, grantees, and any other persons, groups, organizations, or agencies requesting it.

onsite visits.

The equal opportunity staff have the authority to recommend that an applicant remedy its civil rights deficiencies before its application is funded. They may also recommend that an application which does not meet the program standards be rejected. The program representatives can make independent recommendations for approval or rejection, but they cannot overrule equal opportunity staff disapproval of applications for equal opportunity reasons. Where there are disagreements between program and equal opportunity staff the matter is resolved by the area or insuring office director who has the final authority in the funding of HUD's applications. HUD has not taken steps, however, to ensure that all Assistant Regional Administrators for Equal Opportunity are informed of each instance in which an area or insuring office director overrules the recommendation of the equal opportunity staff.[285]

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285. It is the general practice of equal opportunity staff to inform the Assistant Regional Administrators for Equal Opportunity of all instances when they are overruled by area and insuring office directors, but this is not spelled out in the selective review guidelines.

On only rare occasions has the use of program standards resulted in the delay of HUD applications until equal opportunity standards are met. On several occasions, 701 applications were held up because applicants in the Dallas region failed to provide adequate equal opportunity assurances.[286] In San Francisco, equal opportunity staff stated that the majority of agencies fail to address themselves to equal opportunity requirements, either in program content, employment opportunities, or citizen participation.[287] Nonetheless, the San Francisco director recommended deferral of only six applications.[288] The Los Angeles equal opportunity staff was reviewing 26 applications which had deficiencies.[289] Both the San Francisco and Los Angeles offices proposed a new procedure for handling applications not meeting HUD equal opportunity standards. This procedure provides that an applicant receive only 20 percent of the requested funds, with the remainder contingent upon the applicants' correction of all its equal opportunity deficiencies within a designated time period.[290]

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[286] 1973 Odom interview, supra note 101.

[287] Jeffers interview, supra note 113.

[288] In addition, in 1972 the San Francisco Regional Office held up funding for the Association of Bay Area Governments (ABAG) for 6 months until it developed an acceptable housing work program. ABAG has now funded a metropolitan housing group in Alameda County to develop a plan to increase the supply of low- and moderate-income housing and to explore efforts to reduce housing discrimination.

[289] Most of these are city planning agencies, but they include the Arizona State Planning Department, the Navajo and Papago Tribes, and several regional planning agencies. The equal opportunity director indicated that the inadequacies varied, but all applications were deficient in the following areas: program content, minority employment and business opportunities, and citizen representation.

HUD's 701 guidelines briefly discuss sanctions which may be applied to grantees for noncompliance with 701 equal opportunity requirements: fund cutoffs or failure to renew funds. Sanctions can be initiated by the Assistant Regional Administrator for Equal Opportunity but may only be applied by the Assistant Secretary for Equal Opportunity.

Funds have never been cut off from a grantee for failure to comply with the 701 equal opportunity requirements. HUD staff, however, indicated the belief that grantees sometimes were not complying with equal opportunity requirements after their plans were approved and funding was awarded. For example, in the Dallas region, the North Texas Council of Governments and the City of Fort Worth both continued to receive 701 funds although HUD equal opportunity staff believed that both had extremely minimal "housing work programs" which did not include fair housing provisions.[291]

290.This concept contains two features which makes it useful. First, an applicant is given sufficient funds to initiate a project which is beneficial to a large section of the populace. Second, by withholding part of the funds, HUD maintains the leverage necessary to compel the applicant to meet its equal opportunity requirements within a specified period of time.

291.Interview with Martha Chanley, Fort Worth Human Relations Commission, City of Fort Worth, Tex., in Forth Worth, Jan. 30, 1973.

V. Miscellaneous Activities

A. Voluntary Compliance

Although HUD established an Office of Voluntary Compliance[292] within its Washington Equal Opportunity Office in April 1972, by mid-1973 HUD still had not fully outlined a program of responsibility to be carried out by this office. The Office of Voluntary Compliance has developed a visual presentation, explaining the concept of affirmative marketing, to assist field offices in negotiating industrywide plans.[293] The Office of Voluntary Compliance has also developed a draft handbook, in process of revision, and model agreements, to promote the negotiation of voluntary, areawide, affirmative marketing plans.[294]

Other activities of the office include the preparation of a Code for Equal Opportunity in cooperation with the National Association of Real Estate Boards; the planning of public relation films, one aimed at the Spanish speaking community[295] and another demonstrating a multiracial community; and the arranging of a meeting with major fair housing groups to discuss HUD's equal opportunity goals and the best methods of accomplishing them. As a result of this meeting, Voluntary Compliance staff traveled to Cleveland for an examination of the unusual institutional approach to fair housing underway in Cleveland's Operation Equality,[296] a program funded by the Ford Foundation. The Washington office has also participated in HUD efforts to encourage private attorneys to file Jones v. Mayer housing discrimination suits.[297]

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[292] The purpose of this office is to encourage affirmative action by members of the real estate industry and local communities to achieve voluntary compliance with Title VIII. See Section II, A, p. 12, supra.

[293] These plans are discussed in greater detail on pp. 80-83 supra. Industrywide plans have been developed in Dallas, Tex., San Diego, Cal., and Altus, Okla. Preliminary negotiations have started in Chicago, Ill., Houston, Tex., and Oklahoma City, Okla. At one time HUD discussed negotiating nationwide affirmative marketing plans, but it now believes that national plans cannot address the problems, needs, and resources of each separate market area. Nat Smith interview, supra note 50. HUD noted that as of November 1974, plans and agreements have been developed beyond the ones mentioned here. November 1974 Toote letter, supra note 32.

[294] Id.

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[295]. This film will be designed to explain in Spanish HUD's fair housing role and the protection offered by Title VIII, including the process for filing a complaint. It is being produced by an Anglo firm which had never previously produced a film. The film has been underway for 2 years. Interview with Ignacio Lopez; Spanish Speaking Coordinator, Office for Equal Opportunity, HUD, June 18, 1973.

[296]. This organization directs minority homeseekers to specific real estate brokers and then monitors to observe their actions.

[297]. For more information on Jones v. Mayer, see p. 109 supra.

In 1971, HUD explained to some State bar associations the various fair housing laws, including the 1866 civil rights statute.[298] In 1972, HUD initiated the holding of 1-day conferences on the role of the private attorney in fair housing laws. Included in these conferences were lawyer's workshops which explained step by step the filing of Jones v. Mayer suits.[299] These conferences have been continued in 1973[300] and are planned to be continued indefinitely.[301] Ten were to have been held in 1974.[302]

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298. The State bar associations addressed in fiscal year 1972 were: Alabama, Connecticut, Michigan, Nebraska, New York, and Oklahoma.

299. HUD response, supra note 47.

300. In 1973, six conferences were held in the following cities: Champaign-Urbana, Ill.; Portland, Ore.; Silver Spring, Md.; Detroit, Mich.; Philadelphia, Pa.; and Boston, Mass.

301. HUD response, supra note 47.

302. In 1974, these conferences were held at the following universities: New York University, University of Southern California, Duquesne University, University of Seattle, University of Mississippi, University of Denver, University of Texas, University of Connecticut, and University of Missouri. As of June 4, 1974 one more was to have been held before the end of fiscal year 1974. 1974 Holbert interview, supra note 40.

B. Fair Housing Grants

HUD makes a number of grants to private organizations[303] for fair housing activities under Title VIII. Such activities include preparation of fair housing handbooks, demonstration projects on changing institutional real estate structures, and demonstration projects for the analysis of possible methods to eliminate housing discrimination.[304] For example, a

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[303] HUD reports that it has been using its contract authority to involve fair housing groups in research and demonstrations. In one such project, which HUD refers to as "Fifteen Cities," fair housing groups which HUD believes have a good reputation in their communities will act as subcontrators to carry out tasks for which they are "uniquely equipped." September 1974 Toote letter, supra note 82. HUD has also made such a grant to the Massachusetts Commission Against Discrimination, the State human rights agency.

[304] A $50,000 grant has been approved for a project in San Leandro, for the San Leandro "Freedom of Choice" project. Local lenders and brokers are cooperating with an integrated real estate board in neighboring Oakland, Cal., to share listings. In the Fort Worth region, the Greater Dallas Housing Opportunities Center had a grant to a New Orleans coalition of discrimination in Dallas, but this project was not refunded. HUD is considering a proposal for a $150,000 grant to a New Orleans coalition of civil rights groups for an antiblockbusting project. In the Chicago region, the Leadership Council for Metropolitan Open Communities has been funded for $350,000 by HUD to form community-based fair housing groups, work for the passage of fair housing ordinances, and assist minority families in finding housing out of the ghetto. The Leadership Council has also encouraged complainants to file lawsuits and has held workshops on fair housing lawsuits. It has published a booklet entitled "Guide to Practice Open Housing Under Law" which discusses fair housing laws and background cases. It describes how to develop a fair housing case and how to prepare for court and trial. In the Boston region, HUD has given two planning grants to the Massachusetts Commission Against Discrimination, a State agency. The first grant was for a broad scale study of the relationship between jobs and housing and discriminatory housing practices in the Boston area. The second was for the development of new types of evidence and remedies to be used to detect discrimination in housing.

$9,000 grant has been approved for Westchester (N.Y.) Residential Opportunities to prepare a handbook for real estate brokers on how to incorporate fair housing into their business operations. Baltimore, Maryland, has a HUD-funded demonstration project to change the institutional structure of Baltimore County and integrate the Baltimore suburbs. In the San Francisco region, the National Committee Against Discrimination in Housing received a 3-year grant of $300,000 from HUD in 1970. Its research on discrimination in real estate and mortgage lending resulted in the San Leandro Report. It has also funded "Operation Sentinel" to inform persons of their rights under Title VIII and has developed methodology for a "regional applicant pool" centralizing applicant-housing vacancy information on subsidized low- and moderate-income housing in the Bay area. Operation Sentinel's parent group, the Mid-Peninsula Urban Coalition, has applied for a grant to fund a legal revolving fund for litigation under Title VIII and Jones v. Mayer.[305]

All regional offices visited by Commission staff were involved in proposing or supervising grants to local organizations. This support has been worthwhile, but insufficient. HUD has not yet generally used its grants to fund local fair housing groups which have agreed to monitor its fair housing requirements, such as affirmative fair housing marketing plans. Further, it is not sufficient for HUD to fund studies which present methods

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305. Jones v. Mayer, supra note 14.

or alternatives for ending discriminatory practices by brokers, developers, lenders, and realtors. HUD must corroborate any findings of discrimination and make recommendations for their remedy. It must insist that the most feasible findings and recommendations of such studies be implemented. Further, it must design a mechanism for monitoring the implementation of the recommendations of such studies to ensure that they are being carried out.

C. Annual Arrangements

"Annual arrangements"[306] are a means for providing municipal governments with a package of categorical grant programs to meet local needs and priorities in exchange for signing a Memorandum of Understanding outlining the relationship between HUD and a city. The annual arrangements' Memorandum of Understanding is the result of negotiations between a HUD field office and a local general purpose government.[307] Such governments are given funding priority by HUD area offices in order that they can accomplish certain requirements established by HUD.[308]

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[306] According to HUD, annual arrangements have three major purposes: to provide localities with experience preparatory to revenue sharing, to allow HUD to work closely with local governments, and to expedite processing of project applications. In addition, HUD states that this effort is to encourage local flexibility and to allow for field office experimentation. There are no formal handbooks or detailed written instructions on the program.

[307] HUD response, supra note 47.

Among the requirements for annual arrangements is an equal opportunity component. For example, as a part of its annual arrangement, a city might agree to pass or strengthen a fair housing ordinance, establish or strengthen its fair housing commission, hire staff to carry out its enforcement effort, and ensure minority employment.[309]

The regional offices select the cities which are invited to participate in annual arrangements. The selection is usually based on such criteria as the size and existence of a core city area, population characteristics, and volume of HUD programs. Program staff are in charge of executing the agreement, although equal opportunity staff may be asked to design the equal opportunity goals and requirements for cities.[310]

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[308] Among the problems which the agreement must address are improving the living environment, insuring proper relocation resources, insuring coordinated planning in areawide development, promoting development of low- and moderate-income housing, and improving citizen participation.

[309] As part of its annual arrangement, Rockford, Ill., has agreed to strengthen its fair housing law, to hire staff to enforce the law, and to "improve city and county posture" on both equal employment and fair housing.

[310] The Fort Worth Region has six annual arrangement cities for fiscal year 1973: El Paso, Grand Prairie, Olney, Port Arthur, and Waco, Tex., and Albuquerque, N.M. Equal opportunity staff participated in preparing the agreements. Annual arrangement cities in the region will be expected to pass a resolution in support of Title VII and, if possible, develop fair housing ordinances and establish enforcement mechanisms to carry them out.

The annual arrangement process could be used to commit local governments to undertaking widespread affirmative action to open up equal housing opportunities in the participating cities.[311] The operation of the program as of early 1973 was not encouraging.

The quality and comprehensiveness of the equal opportunity component of the arrangements depends very much upon the amount and strength of input by area equal opportunity staff, and HUD equal opportunity staff are not always part of the program teams negotiating annual arrangements.[312] In fact, HUD reports that only about two-thirds of the arrangement agreements make reference to activities to further fair housing opportunity.[313] Further, even where fair housing components have been included in annual arrangement agreements, they have been often so weak as to be practically nonexistent.[314] Finally, there have been no formal compliance reviews of annual arrangement agreements, although if an annual arrangement is renegotiated, the equal opportunity commitments of the previous arrangement will be reviewed. Finally, with the moratorium on many HUD programs, there is little incentive for cities to keep their part of the agreements.

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[311] The following had annual arrangements: Region I (7)--Boston, Fall River, New Bedford, and Springfield, Mass.; Pawtucket, R.I.; Bridgeport, Conn.; Portland, Me. Region II (4)--Patterson and Plainfield, N.J.; Syracuse, N.Y.; Virgin Islands. Region III (3)--Wilmington, Del.; Erie, Pa.; Hampton, Va. Region IV (7)--Athens, Ga.; Rock Hill, S.C.; Winston-Salem, N.C.; Biloxi, Miss.; Tampa, Fla.; Morristown, Tenn.; Danville, Ky. Region V (9)--Carbondale and Peoria, Ill.; Youngstown, Ohio.; Grand Rapids, Mich.; Evansville, Fort Wayne, and Gary, Ind.; Milwaukee, Wis. and State of Wisconsin. Region VI (24)--Albuquerque and Tucumcari, N.M.; El Paso, Grand Prairie, Olney, Port Arthur, Waco, Corpus Christi, Eagle Pass, Laredo, and San Antonio, Tex.; Camden, Fort Smith, Newport, and West Memphis, Ark.; Baton Rouge, Lafayette, Monroe, New Orleans, and Shreveport, La.; Lawton, Shawnee, Stillwater, and Tulsa, Okla. Region VII (10)--Topeka, Kan.: Council Bluffs, Davenport, Des Moines, Mason City, and Ottumwa, Iowa; Lincoln and North Platte, Neb.; Charleston and Wallston, Mo. Region VIII (4)--Butte, Mont.; Rapid City and Sioux Falls, S.D.; Standing Rock Indian Reservation, N.D. and State of South Dakota. Region IX (10)--Oxnard, Pasadena, Riverside, San Buenaventura, San Diego, Oakland, Richmond, San Jose, and Stockton, Cal.; Hawaii County, Hawaii, Region X (2)--Portland, Ore., and Seattle, Wash.

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[312] For example, the equal opportunity division in the Chicago Regional Office does not often get involved in the annual arrangement process. In 1972, the equal opportunity division in the Columbus Area Office complained that it was being excluded from participation in the annual negotiations with Youngstown, Ohio. The Area Director was persuaded by the Assistant Regional Administrator for Equal Opportunity in Chicago to include equal opportunity staff.

[313] HUD response, supra note 47.

[314] The San Francisco Area Office developed a citywide affirmative action program as the equal opportunity component of the annual arrangement package negotiated with localities. However, it concentrates primarily on minority employment and its fair housing aspect is restricted to a promise that the city will conduct an analysis of its fair housing problems.

D. Racial and Ethnic Data

Racial and ethnic data[315] for most HUD programs[316] are collected on applications and reports, e.g., interim progress reports on affirmative marketing by builders submitted to HUD area and insuring offices. These data can be tabulated for entire HUD regions and for particular counties, Standard Metropolitan Statistical Areas (SMSA's), and even smaller areas. Monthly sales and occupancy reports for individual projects required by affirmative marketing regulations have begun to come into HUD field office but, as of late spring 1974, had to be tabulated by hand. In order to analyze these data, the FHA economic market analysis divisions in the field offices periodically compile demographic data, including racial and ethnic statistics for counties. They have also prepared maps upon request which show racial and ethnic group concentration in geographical areas[317] and an economic breakdown, i.e., income of communities by white and nonwhite categories.

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[315] The categories often include American Indian, Asian American, black, Spanish speaking, and white, although they are sometimes more limited. For example, in HUD's urban renewal program the following categories are used: "White (Non-Minority), Negro/Black, other minorities and not reported." Letter from Gloria E.A. Toote, Assistant Secretary of Equal Opportunity, Department of Housing and Urban Development, to Jeffrey M. Miller, Director, Office of Federal Civil Rights Evaluation, U.S. Commission on Civil Rights, Sept. 25, 1974.

[316] The HUD programs for which data are collected include public housing and some multifamily and single family housing programs. Data on participation in community development programs are not available, with the exception of data on the occupants of dwelling units in residential construction generated through HUD's urban renewal program on employment in model cities programs and on persons relocated because of these programs.

[317] The geographical area varies according to requests, i.e., whoever (recipients, HUD staff, or other agencies' staff) makes a request delineates the area(s) for which information is needed. Thompson interview, supra note 42.

HUD, in August 1972, stated that it planned to develop comprehensive data maps for 145 major metropolitan areas for use by field staff. The maps were contracted out to private concerns for $500,000. The number of maps that are being developed, however, has been reduced to 40 SMSA's.[318] Unfortunately, the Nation's two major SMSA's, New York and Los Angeles, are not being done. The information on each of the 40 SMSA's will vary depending on the ability of the contractor to gather and/or produce the information requested by HUD.[319]

The maps will contain demographic information from the census displayed on base maps of the metropolitan area, showing street outlines. The maps will also show the location of HUD subsidized housing projects. In addition, occupancy characteristics[320] of HUD's housing projects will be included if the managers of the projects gather and maintain such information. Contractors will not be required to obtain this information if project managers have not collected it. Further information contained in the maps will include the date the housing projects were started, when they were completed, kind of programs they are, and funding information.[321]

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[318] Examples for which mapping is being done are Chicago, Washington, D.C., Milwaukee, Memphis, Buffalo, Newark, Hartford, San Jose, and Phoenix.

[319] Telephone interview with Marilyn Fine, Government Technical Representative, HUD, Washington, D.C., June 14, 1974.

[320] This data is broken down into black, Spanish speaking, Asian American, and elderly.

[321] Fine interview, supra note 319.

The contract closeout date was May 31, 1974, but as of June 14, 1974, the maps were not completed. They were to have been completed by the third week of June 1974. They were then to be sent to the field offices for a period of evaluation before the information was made available to the public.[322]

It is impossible to determine if HUD programs are reaching minorities and women without data on the race and ethnic origin cross classified by sex of the beneficiaries. Nonetheless, Commission staff found that although equal opportunity staff in the field offices are aware of the availability of such data, they rarely request or use the data. In fact, the Commission found only one example of field office staff making use of racial and ethnic data.[323] Equal opportunity staff have stated that there are already too many demands on their time and that data use is not a priority.

Finally, it is difficult to tell if HUD has corrected many of the major deficiencies in its racial and ethnic data collection system.[324] For example, in mid-1972, HUD had yet to publish data on single-family housing programs but anticipated that these data would be published by the end of 1972. When HUD was asked if these data had ever been published, the response was that a "table" had been "prepared" on a national

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322. Id.

323. The equal opportunity specialists in the Fort Worth FHA Insuring Office tabulated occupancy applications by race for all 236 and rent supplement projects in Fort Worth. The analysis was done because of complaints received by the equal opportunity office. They were planning to use these in recommending possible compliance remedies.

324. These deficiencies were noted in the Reassessment report, supra note 41, at 35, 36.

basis by type of program and by minority group, and that a new minority reporting system was being tested.

HUD does not yet collect data on racial and ethnic composition of neighborhoods in which single-family housing sales are made, and thus it is not possible to assess the extent to which sales made through HUD's single family housing program perpetuated or combated segregated residential patterns. It appears that HUD does not yet collect data on the racial and ethnic composition of the population for which HUD's programs are targeted, and thus it seems that HUD cannot measure the extent to which minorities are proportionately represented in its programs.[325] It also appears that HUD does not collect racial and ethnic data on private housing and does not make systematic use of census data to survey the Nation's racial and ethnic housing patterns.[326]

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325. When HUD was asked if such data were collected, HUD's response was:

> Eligibility for participation in the so-called subsidized housing programs historically has been based on family income. The objective was to reach the disadvantaged both in the context of race and ethnicity. The current effort in the Direct Cash Assistance experiment should provide some useful information at the neighborhood level, although the experiment is limited to only a few areas throughout the country. Toote letter to Miller, supra note 315.

326. When asked if data on private housing were collected or if such a systematic survey was made, HUD responded:

> The Census Bureau collects the basic information on the construction of private housing with some limited HUD funding. Extensive HUD funding is involved in the Annual Housing Survey, a joint undertaking with the Census Bureau which attempts to provide intelligence on the size and condition of housing stock in yearly intervals between the Decennial Censuses....Id.

VI. Interagency Coordination

A. General Services Administration (GSA)

On June 11, 1971, HUD and GSA signed a Memorandum of Understanding[327] in which they agreed that HUD would investigate and report its findings to GSA on the availability of low- and moderate-income housing on a nondiscriminatory basis in the vicinity of GSA proposed project development investigations, site selections for public buildings, or lease actions.[328]

In carrying out its investigations and in making its recommendations to GSA, HUD is to judge a community by its degree of conformance with the following three basic requirements:[329] (1) supply of low- and moderate-income housing on a nondiscriminatory basis; (2) nondiscrimination in the sale and rental of housing on the basis of race, color, religion, or national origin; and (3) availability of transportation from housing to site.

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327. Memorandum of Understanding Between the Department of Housing and Urban Development and the General Services Administration Concerning Low- and Moderate-Income Housing, signed by Robert L. Kunzig, Administrator, GSA, June 11, 1971, and George Romney, Secretary, HUD, June 12, 1971 (41 C.F.R. § 101-17, 4801). This agreement was developed as a mechanism for implementation of Executive Order 11512, issued in February 1970. The Executive Order requires that GSA cooperate with other Federal agencies, including HUD, in determining the social and economic impact of proposed sites for Federal installations. For further information on the memorandum and its implementation by HUD and GSA, see Chapter 4, General Services Administration, infra. That chapter discusses the memorandum more fully as well as GSA's coordination with HUD and GSA's other activities under the Executive order and the memorandum.

328. A project development investigation is a general survey of a metropolitan area conducted by GSA for the purpose of identifying possible sites for a new Federal facility in that area. A site selection is a review by GSA of a particular site for which construction or purchase of a facility for Federal use is proposed. A lease action entails a review by GSA of a particular structure and the surrounding locality in order to assess the feasibility of a lease of the structure for Federal use.

329. U.S. Department of Housing and Urban Development, Procedure For Implementation of Memorandum of Understanding Between HUD and GSA (May 1973).

In detailed procedures for implementation of the Memorandum of Understanding, HUD outlines specific information which it must obtain for GSA in order to determine the adequacy of the supply of low- and moderate-income housing[330] and the availability of transportation from housing to site.[331] In contrast, in the third area, that of making a

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330. HUD must provide GSA with a general area survey which covers the following: 1) a summary on the general types, location, cost, and vacancy rates for all low- and moderate-income housing in the survey area; 2) a listing, by location, of all HUD-subsidized housing in the survey area, including racial occupancy and vacancy rates; 3) an estimate, by general location, of the supply of low- and moderate-income housing in the survey area which would meet the standards for relocation housing; 4) a listing, by location, of all subsidized housing planned to have construction begun within the survey area for the 1-year period following the survey; 5) a listing of competing displacement needs (including source of displacement, estimated number of displacees, and their estimated racial breakdown) for the planned subsidized housing; 6) a delineation of the geographic boundaries of all urban renewal, neighborhood development project, code enforcement, and model cities areas; and 7) a delineation of those subareas within the survey which appear accessible to a supply of low- and moderate-income housing on a nondiscriminatory basis, and those which do not so appear.

331. For public transportation the following information must be reported: 1) estimates of travel time to the site from low- and moderate-income housing and from higher-income housing. Travel time from low- and moderate-income housing should not exceed the estimated travel time from higher-income housing; 2) types of available public transportation and the extent of its routes; 3) frequency of service, especially during the opening and closing of the business day; arrivals and departures must be within 15 minutes before opening and after closing hours of business, respectively; 4) fares must be reported, and the percent of the relocating agency's work force who are anticipated to use the service during rush hours estimated; and 5) a statement as to whether public transportation is operating on a nondiscriminatory basis.

determination of the extent of discrimination in the sale and rental of housing, no steps for making this determination are outlined.

HUD is not required to conduct a communitywide compliance review.[332] It is not directed to determine whether the community has a comprehensive enforceable fair housing law or whether there are no zoning laws in effect. It is not required to review census data showing the geographic dispersal of minorities throughout the community, examine housing discrimination complaints it received or those filed with a State or local agency, assess actions by local government officials and civil rights groups to ensure that all facilities and services in the community are open to minority group families on an equitable and desegregated basis, or report to GSA on the results of previous compliance reviews or on the results of affirmative marketing agreements in that geographic area. There is no requirement that any fair housing information collected be made public.[333]

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[332] HUD conducts few compliance reviews under Title VIII. See Section III *supra*. The HUD-GSA agreement could be used by HUD as occasion to improve its program of compliance reviews.

[333] This information could be particularly helpful to fair housing groups, which may use the occasion of a proposed Federal site as leverage in their demands for fair housing.

If a community, delineated area,[334] or specific site is inadequate in any one or more of the three basic requirements[335] HUD is supposed to give it a negative recommendation in its report to GSA and to outline corrective actions which should be taken to overcome the inadequacies noted. If GSA's final choice is a site unacceptable to HUD, an affirmative action plan must be developed by HUD, GSA, the relocating agency, and the community. Prior to developing the affirmative action plan, HUD must obtain from the agency being relocated the number and names of its present low- and moderate-income employees. HUD must then conduct a survey[336] of these employees in order to determine the minimum amount of housing that will be needed within 6 months of the opening of the facility. HUD staff must also meet with appropriate officials of the moving agency to assist them in planning their counseling services. In addition, HUD staff must meet with officials of the community involved to request corrective actions. At this meeting HUD will inform the officials of the results of the general area survey and the corrective actions HUD has recommended to rectify the problems.[337]

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334. This is the area in which GSA proposed to locate a Federal facility or lease space for such a facility.

335. These requirements were discussed earlier in this section, see p. 120 supra.

336. The survey should have questions on family size and income levels, size of housing units needed, how many employees would rent units, and how many would purchase near the facility.

337. Procedures For Implementation, supra note 329.

The affirmative action plan developed by HUD must ensure that an adequate[338] supply of low- and moderate-income housing is available. HUD's area office can provide funding to the community to increase the supply if it is inadequate. HUD is also responsible for assisting in the development or revision of a local fair housing ordinance or law if discrimination in housing is evident in the community. HUD must also initiate the necessary steps towards gaining recognition for the community's housing law as having substantial equivalency to Title VIII. In the area of transportation, if the need arises, HUD is responsible for involving the local public transportation companies to determine the feasibility of changing routes and/or schedules to increase accessibility. HUD should also encourage GSA to discuss with the community and lessor or building contractors the possibility of additional parking facilities in or near the new facility if private transportation improves accessibility for low- and moderate-income employees. Further, if the community is unable to solve its own transportation problems, it is HUD's responsibility to encourage GSA and the community to contact Federal and State departments of transportation for assistance.[339]

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338. A housing supply is adequate if it will, within 6 months of the opening of the new facility, include sufficient units to accommodate low- and moderate-income employees of the new facility when fully staffed. These units must be in excess of those needed to fill any current deficit in the community.

339. Procedures for Implementation, supra note 329.

HUD has always responded with a report when GSA has consulted it with respect to project development investigations, site investigations, and major lease actions. The quality of HUD's reports, however, has been inadequate. The reports usually only provide the specific information requested by GSA, and GSA has often failed to ask for fair housing information.[340] For example, in 1971 the Boston Regional Office had to provide reports on two project development investigations -- in Springfield and Pittsfield, Massachusetts -- and two site investigations -- in Manchester, New Hampshire, and New Bedford, Massachusetts. In each case, GSA contacted HUD for information on HUD programs in the proposed site area. In only the Pittsfield request, however, did GSA specifically ask for information on open and fair housing. HUD's response to the Pittsfield request was merely that it had not encountered "complaints or other indications" that housing discrimination existed.[341]

For the other three cities the HUD reports did not even discuss the subject of housing discrimination, which is one of the main emphases of the agreement. Further, the reports only superficially covered the low- and moderate-income units existing and those under construction, and they often did not provide data on vacancy rates, racial composition, or transportation facilities.

34[illegible]. See Chapter 4, General Services Administration, *infra*.

341. Letter from James J. Barry, Regional Administrator, HUD, Boston, Mass., to Albert A. Gammel, Jr., Regional Administrator, GSA, Boston, Nov. 10, 1971.

A further example of the inadequacy of HUD's reports can be found in the Fort Worth Regional Office. The Dallas Public Building Service staff,[342] under instructions of the central office, designed and used a form letter to be used in soliciting the HUD information.[343] In essence, in this letter GSA only asks for concurrence with an assumption that there is a sufficient supply of low- and moderate-income housing available on a nondiscriminatory basis and accessible to the proposed site. HUD as of January 1973 had not challenged this approach.

B. Department of Justice (DOJ)

Under Title VIII of the Civil Rights Act of 1968 the Attorney General has the power to bring suit against any person or group of persons believed to be engaged in a pattern or practice of housing discrimination. During fiscal year 1973, a total of 58 suits were filed by the Department of Justice to end racial and ethnic housing discrimination.[344] Further, under Executive

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[342] This is the division within GSA which is responsible for implementing the HUD-GSA agreement.

[343] See, for example, letter from Jay Bolton, Regional Administrator, GSA, Fort Worth, Tex., to Richard Morgan, Regional Administrator, HUD, Fort Worth, Tex., Nov. 15, 1972, concerning El Paso, Tex.

[344] Suits against apartment owners covered about 33,000 rental units. In addition, two municipalities, Black Jack, Mo., and Parma, Ohio, were charged with using zoning powers to exclude racially integrated housing developments. Court orders requiring the desegregation of public housing were obtained in Albany, Ga., and Gadsden, Ala. A suit was filed to desegregate public housing in Cairo, Ill. In fiscal year 1973, DOJ filed its first suit charging an apartment owner with discrimination against Asian Americans.

Order 11764,[345] DOJ is responsible for coordinating the Title VI activities of Federal agencies.

In November 1972, DOJ and HUD signed a Memorandum of Understanding for the exchange of information between the two agencies.[346] Additionally, HUD has established a liaison with DOJ's Housing Section, Civil Rights Division, to identify real estate organizations in cities where DOJ activity has prepared the way for voluntary HUD compliance agreements,[347] and to coordinate activities with realtor groups throughout the Nation.[348]

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[345] Executive Order 11764, (39 Fed. Reg. 136 (Jan. 23, 1974)), was signed on January 21, 1974. It expanded and clarified the Attorney General's role as coordinator of Title VI as set forth in Executive Order 11247. Executive Order 11764 supersedes Executive Order 11247, 3 C.F.R. § 348 (1965). See U.S. Commission on Civil Rights, The Federal Civil Rights Enforcement Effort--1974--Policy Makers (in preparation).

[346] According to the agreement, DOJ is to send a biweekly list of recently-initiated investigations to HUD. HUD is supposed to review the list and inform DOJ of pending complaints involving the same respondent and/or complaint. HUD is also to send DOJ a biweekly compilation of new matters. including the name of the complainant and respondent, address of the disputed

review the list and inform HUD if it has a matter involving any of the parties under investigation. In addition DOJ is to send to HUD a copy of its weekly report containing such information as on new suits, consent decrees entered, judgments entered, and compliance reports received. In turn, HUD is to send DOJ a monthly list of conciliation agreements entered into, and if possible identify those matters which DOJ also investigated. Further, DOJ is to send a monthly list to HUD of matters it has brought suit in, sent notice letters in, or in which other negotiations have been commenced, and identify those matters which have also been the subject of HUD investigations.

[347] This activity is usually the investigation of discrimination complaints coupled with documentation that discrimination did exist.

[348] HUD response, supra note 47.

In an effort to develop better coordination, senior HUD civil rights officials met several times with top Civil Rights Division staff in 1973 to discuss cooperation between the two agencies.[349] They explored the possibility of the joint investigation of Title VI and VIII cases, the joint conciliation of Title VI cases where HUD investigators have determined there is "remedy potential," and the referral of more cases which HUD has been unable to conciliate.[350] The Justice Department indicated it was interested in handling some Title VI cases referred by HUD.

Formal referral of cases by HUD to DOJ,[351] however, has not substantially improved. HUD does not refer as many cases as it should, and in some instances it does not refer a case until DOJ is in the middle of proceedings with the respondent.[353] In addition, the formal referral process for Title VIII takes too long. Some HUD staff, however, in order to shorten the process make "informal referrals" by simply bringing a complaint to the attention of DOJ and bypassing the formal structure.[354]

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[349] Telephone interview with Alexander Ross, Deputy Chief, Housing Section, Civil Rights Division, Department of Justice, Washington, D.C., May 3, 1974.

[350] 1973 Holbert interview, supra note 127.

[351] HUD's referral procedure is for the Assistant Regional Administrator for Equal Opportunity to recommend a referral to the Director of the Office of Civil Rights Compliance and Enforcement, who in turn makes the recommendation to the Assistant Secretary for Equal Opportunity. The Assistant Secretary then decides whether or not to refer to the Department of Justice. The DOJ staff, however, believes that a formal referral must be sent from the Assistant Secretary's Office to HUD's General Counsel, who decides if it will be forwarded to DOJ. DOJ staff also feel that HUD's General Counsel takes a more conservative position than the state of the law requires. Interview with Frank Schwelb, Chief, Housing Section, Civil Rights Division, DOJ, Washington, D.C., June 5, 1974, and Alexander Ross, Deputy Chief, Housing Section, Civil Rights Division, DOJ, Washington, D.C., July 1, 1974.

[352] Ross interview, supra note 35.

In 1973, the Department of Justice acted upon approximately 20 referrals from HUD.[355] From January to May 1974, 10 cases were referred by HUD to the Department of Justice. Approximately 5 to 10 percent of DOJ's litigation is based on formal referrals. Most litigation is not based on HUD referrals because DOJ is involved in "pattern and practice," while HUD deals mostly with single complaints.[356]

An illustration of the cooperation between HUD and DOJ occurred in the Chicago region. The Chicago Assistant Regional Administrator for Equal

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[353] Schwelb interview, supra note 351.

[354] Id.

[355] The Department of Justice did not keep accurate records of HUD referrals in 1973, since it was only interested in documenting those it had decided to act on. The records show that 20 referrals were received that year, but DOJ estimates that there were more than that. Telephone interview with Celeste Barham, Docket Clerk, Housing Section, Civil Rights Division, DOJ, May 8, 1974.

[356] Schwelb interview, supra note 351.

Opportunity requested that assistance from the Justice Department be sought in regard to some discrimination problems with the National Homes Corporation. The case evolved because since 1971 the regional office had received several Title VIII complaints against subsidiaries of National Homes Corporation alleging discrimination in the sale of houses. Therefore, in 1972 the HUD central office began negotiating a voluntary affirmative marketing plan with National Homes to cover all its nationwide business. The effort was dropped because National Homes refused to concede. In the meantime, the Civil Rights Division of the Justice Department filed suit against National Homes. HUD and the Justice Department, however, had not coordinated these activities in order to apply stronger pressure on National Homes. At this point both agencies realized that they were attempting to bring National Homes into compliance with fair housing goals. The coordination between the agencies was only slightly improved, with HUD providing the Department of Justice with the information it had. HUD, however, ceased pursuing its own action against National Homes, and merely assigned a representative to be present at the negotiation meetings between the Justice Department and National Homes. On May 11, 1973, the Justice Department negotiated a nationwide consent decree with National Homes.

C. Federal Financial Regulatory Agencies

Section 808 of the Fair Housing Law requires all Federal agencies to administer their programs and activities relating to housing and urban development affirmatively to further fair housing. It also requires agencies to cooperate with HUD, which is given responsibility for the overall administration of Title VIII.

HUD continues to meet with the Federal financial regulatory agencies as they attempt to determine the extent of their authority for requiring nondiscrimination by their regulatees.[357] HUD has not taken the important step of issuing regulations for ensuring nondiscrimination in mortgage financing.[358] The Federal financial regulatory agencies, however, on a 6-month experimental basis, are requiring banks to collect racial and ethnic data on applicants for mortgage loans.[359]

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357. The fair housing activities of these agencies are discussed at length in Chapter 2, the Federal Financial Regulatory Agencies *infra*.

358. Such regulations would also apply to Federal agencies insuring housing and home improvement loans, such as HUD itself, the Farmers Home Administration, and the Veterans Administration. They could require banks making federally-insured loans to take affirmative steps to ensure nondiscrimination in their lending activities. For example, banks might be required to advertise publicly the geographic areas in which they make housing loans; to hold interest rates constant for all customers including the banks' own depositors; and to count both spouses' incomes, and any incomes from a second job in calculating the applicants' capacity for repaying mortgage loans.

359. For more information see Chapter 2, The Federal Financial Regulatory Agencies *infra*.

D. Department of Defense (DOD)

HUD and DOD have infrequently worked together to attempt to eliminate the housing problems of minority service persons. In 1974, HUD held an administrative meeting on equal housing opportunity for the military.[360] HUD's central office's only other cooperation with DOD has been to invite military housing coordinators[361] to attend HUD's training sessions for State civil rights agencies, but the military has rejected all the invitations.[362]

Some of the regional offices have been more successful in working with the military than the central office. The Boston Regional Office has contacted the military housing coordinators from several military installations in the Boston area in an attempt to develop an agreement with regard to the investigation and remedy of housing discrimination complaints filed by minority service persons.[363] The Boston office has attempted to persuade the military housing coordinators to refer complaints immediately to HUD. The bases have not been receptive.[364] In some instances, however, the housing coordinators have agreed to display HUD equal opportunity posters and place complaint forms prominently to inform service persons of their option to file complaints with HUD.[365]

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[360] See note 153 supra.

[361] The housing coordinators maintain a list of housing either for sale or rent which is made available to military personnel seeking housing. They also handle discrimination complaints.

[362] HUD response, supra note 47.

[363] The DOD's regulations for handling complaints are weak. For example, a respondent has only to sign a nondiscrimination certification in order to have the case closed and there is no monitoring or followup investigation to ensure that the respondent is complying.

[364] Housing coordinators usually attempt to solve their own cases simply by removing from their list agencies or persons who practice housing discrimination.

HUD's Region IX equal opportunity staff have had some contact with personnel from military installations in the region regarding housing discrimination complaints from minority service persons. Top equal opportunity staff in that region have visited a number of military bases, including Hamilton Air Force Base and Alameda Naval Station in the San Francisco, California, area, Mare Island Naval Station in Vallejo, California, and Luke Air Force Base in Phoenix, Arizona. They have provided base housing coordinators with HUD fair housing posters and complaint forms and have encouraged them to refer complaints to HUD if they are unable to resolve them successfully.[366] As a result, the regional equal opportunity office has received a number of complaint referrals.[367] Review of several such referrals showed that in one case, referred from Luke AFB, the respondent refused to admit discrimination or to conciliate with HUD, and HUD recommended that the complainant file suit.[368]

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365. The Boston HUD office, nonetheless, had not received any complaints from service persons.

366. DOD complaint regulations do not provide for damages for the complainant in the event of a finding of discrimination. Nor do they contain provisions for affirmative action by the respondent. Generally, the only action the military installation may take is to place the housing in question off-limits to service persons in the future. The regulations do provide for referral to HUD's Washington office if a complaint respondent is uncooperative.

367. Equal opportunity staff were unable to supply an exact figure.

368. This complaint case was Lucas v. Pickard. As of May 3, 1974, the case had been forwarded to a private attorney and HUD did not know anything about it. Telephone interview with Ted Simmons, Conciliator, HUD Regional Office, San Francisco, Cal., May 3, 1974.

CHAPTER 2

Federal Financial Regulatory Agencies

The Federal Reserve System

The Federal Deposit Insurance Corporation

The Office of the Comptroller of the Currency

The Federal Home Loan Bank Board

I. Program Responsibilities

A. Federal Reserve System (FRS)

The Federal Reserve System was created pursuant to the Federal Reserve Act of December 23, 1913.[369] The System is composed of the Board of Governors,[370] the Federal Open Market Committee,[371] the 12 Federal Reserve

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[369] 12 U.S.C. § 221 *et seq.* (1970). The act created a partnership system between bankers and government. The System was created, over the initial opposition of the banking industry, for the purposes of establishing a central banking system and enhancing the safety of the people's bank deposits through regulation of banking practices. L. M. Kohlmeier, Jr., *The Regulators* 231 (1969).

[370] The Board of Governors is the policymaking body of the System. Its seven members are appointed by the President.

[371] The Open Market Committee sets regulations for the Reserve Banks' purchase and sale of securities in the open market. These purchases and sales supply the banks with reserves for long term economic growth and serve to offset critical financial swings.

Banks[372] and their 24 branches situated in different sections of the United States, the Federal Advisory Council,[373] and the member banks, which include all national banks[374] in the United States and such State banks and trust companies as have voluntarily applied to the Board of Governors for membership and have been admitted to the System.[375]

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[372] The Federal Reserve Banks extend credit to member banks.

[373] The Federal Advisory Council advises the Board of Governors on general business conditions and other matters within the Board's jurisdiction. There are 12 members. The board of directors of each Federal Reserve Bank selects one member annually.

[374] National banks are a Federal creation, dating back to 1864. Their status as such carries with it many substantial benefits: they hold the exclusive privilege within the banking community of using the word "national" in their titles; they automatically receive the benefit of Federal Deposit Insurance Corporation deposit insurance; they are members of the Federal Reserve System; and they are protected by Federal statute from certain forms of State taxation. Between 1960 and 1971 the total resources of the national banks increased from $140 billion to $376.5 billion.

[375] The members are stockholders in the Federal Reserve Banks.

One of the Board's most important tasks is to regulate its member banks. It determines general monetary, credit, and operating policies for the system as a whole. It also sets the requirements for reserves to be maintained by member banks against deposits and limits the interest rates which may be paid by member banks on their savings deposits.[376]

B. Federal Deposit Insurance Corporation (FDIC)

The Federal Deposit Insurance Corporation was originally created on June 16, 1933, as Section 12B of the Federal Reserve Act.[377] The Corporation automatically insures[378] deposits of member banks of the Federal Reserve System. It also insures State-chartered, non-Federal Reserve member commercial banks and mutual savings banks which voluntarily apply for and are granted the benefits of FDIC insurance.[379]

C. Office of the Comptroller of the Currency (COC)

The Office of the Comptroller of the Currency in the Department of the Treasury was created in 1864 by the National Bank Act.[380] COC charters and supervises this country's 4,600 national banks and branches.[381] As administrator of national banks, COC is responsible for the execution of laws relating to these banks and promulgates rules and regulations governing their operations. A principal function of COC is examination and supervision of national banks.[382]

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[376] Members of the Federal Reserve System have access to its discount facilities, free currency and coin shipments from Federal Reserve Banks, free examinations, and various financial publications which allow each bank to evaluate its financial status. Interview with John E. Ryan, Supervisory Review Examiner, Division of Supervision and Regulation, Board of Governors of the Federal Reserve System, Feb. 21, 1974.

[377] 12 U.S.C. § 1811 *et seq.* (1970). Subsequently, Section 12B, as amended, was withdrawn and made a separate act, the Federal Deposit Insurance Act, on September 21, 1950.

[378] The Corporation reimburses depositors of any insured bank which closes without making adequate provision to pay the claims of the depositors.

[379] As of December 1972, 98.4 percent of all commercial banks in the United States, and over two-thirds of all mutual savings banks, participated in Federal deposit insurance. Federal Deposit Insurance Corporation, Annual Report, 1972, p. XII.

[380] 12 U.S.C. § 1 (1970).

Approval of the Comptroller is required for the organization of new national banks, conversion of State chartered banks into national banks, consolidations or mergers of banks where the surviving institution is a national bank, and the establishment of branches by national banks.

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[381] The supervision of national banks drew these comments from one of the Nation's foremost administrative law authorities:

> Probably the outstanding example in the Federal Government of regulation of an entire industry through methods of supervision, and almost entirely without formal adjudication, is the regulation of national banks. The regulation of banking may be more intensive than the regulation of any other industry, and it is the oldest system of economic regulation. The system may be one of the most successful, if not the most successful. The regulation extends to all major steps in the establishment and development of a national bank, including not only entry into the business, changes in status, consolidations, reorganizations, but also the most intensive supervision of operations through regular examination of banks. K. C. Davis, Administrative Law Treatise, §4.04 (1958).

[382] In addition, the Comptroller is authorized to examine each non-national bank and trust company in the District of Columbia (12 U.S.C. § 42). Although examination is an important function of each of the financial regulatory agencies, overall, it is more important to the Office of the Comptroller of the Currency, as COC has fewer other responsibilities.

D. Federal Home Loan Bank Board (FHLBB)

While national and State banks are regulated, insured, and supervised by three separate Federal agencies, building and loan, savings and loan, and homestead associations and cooperative banks are controlled only by the Federal Home Loan Bank Board, which supervises the operation of 12 regional Federal Home Loan Banks (FHLB's), charters Federal savings and loan associations, and insures savings accounts through the Federal Savings and Loan Insurance Corporation (FSLIC).[383]

The Federal Home Loan Bank Board[384] was created by the Federal Home Loan Bank Act of 1932.[385] The act provides for the establishment of up to 12 Federal Home Loan Banks throughout the country whose function is to lend money to their members. The kinds of financial institutions eligible for membership in the Federal Home Loan Banks include savings and loan associations, savings banks, and insurance companies.[386] In order to qualify for membership, an institution must make long term mortgages, be duly organized under the laws of any State or of the United States, and be subject to inspection and regulation under the banking laws, or similar laws, of any State or of the United States. All federally-chartered savings and loan institutions must be members of their region's Federal Home Loan Bank as well as insured by the Federal Savings and Loan Insurance Corporation (FSLIC).[387] State-chartered savings and loan companies may also voluntarily apply for and receive FSLIC insurance. All FSLIC insured institutions are Bank members.

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[383] Parallel to the Federal Reserve System's Advisory Council (see note 373, *supra*), the Federal Savings and Loan Advisory Council is an independent, statutory advisory body to the FHLBB in its administration of the FHLB's and the FSLIC.

[384] The FHLBB is an independent Federal agency headed by a three-member Board which is appointed by the President for 4-year overlapping terms and is confirmed by the Senate. The Board also serves as the Board of Directors of the Federal Home Loan Mortgage Corporation which was established by the Emergency Home Finance Act of 1970 to operate a secondary market in conventional mortgages.

[385] There are three statutes that provide separate and distinct authority for savings and loan association regulation: the Federal Home Loan Bank Act authorizes regulation of the members of the Federal Home Loan Banks (12 U.S.C. § 1421 *et seq.* (1970)); the National Housing Act (12 U.S.C. § 1725 (1970)) provides for limited regulation of associations insured by FSLIC; and the Home Owners Loan Act of 1933 (12 U.S.C. § 1464 (1970)) provides FHLBB with a broad range of powers over federally-chartered savings and loan associations.

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386. Under the Federal Home Loan Bank Act members may also include building and loan associations, homestead associations, and cooperative banks. These are simply other names for savings and loan associations.

387. The Federal Savings and Loan Insurance Corporation was created in 1934 by the National Housing Act. 12 U.S.C. § 1725.

The FHLBB assures the safety and soundness of member associations by checking appraisals and accounting practices. Other duties of the Board include regulating the interest that can be paid on savings accounts, approving applications for bank mergers, and regulating the accuracy of member institutions' advertising. Benefits of membership in the system include access to data processing of mortgage and saving accounts, time deposit and securities safekeeping facilities, economic research and investment management services, and most importantly, advances of funds from Federal Home Loan Banks and the transferral of funds by these banks from one regional Federal Home Loan Bank to another.

The FHLBB is probably second only to the Department of Housing and Urban Development (HUD) in number and importance of activities relating to housing and community development. The majority of home mortgages are made by savings and loan associations, most of which come under the supervision of FHLBB.[388]

E. Distribution of Responsibilities Among the Regulatory Agencies

The banking responsibilities of the COC, FRS, and FDIC are summarized in Figure 1: the Comptroller of the Currency supervises national banks; the Federal Reserve System provides membership to all national banks and regulates those State banks which have voluntarily joined the system as members; the Federal Deposit Insurance Corporation insures national banks, State member banks of the Federal Reserve System, and State non-member, FDIC-insured banks.

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388. The savings and home financing industry--the country's major source of private funds to finance construction and purchase of housing--over which FHLBB has supervisory responsibility, is a $216 billion industry. FSLIC insures the funds of over 53 million savers in 4,178 member institutions up to $20,000. These funds represent in excess of $209 billion in savings capital. In 1973, all operating savings and loan associations closed $51.4 billion in loans. Federal Home Loan Bank Board, News (June 22, 1973).

Although the banking functions of the three agencies are overlapping, their examination responsibilities, which are prescribed by law,[389] are limited to groups of banks[390] fitting into the following categories: national banks, which are examined by the Comptroller of the Currency; State member banks, which are examined by the Federal Reserve System; and State nonmember banks, which are examined by the Federal Deposit Insurance Corporation.[391]

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[389] Authorization for COC examination of national banks is outlined in 12 U.S.C. § 481. Authorization for Federal Reserve Banks' examination of State member banks in their districts is outlined in 12 U.S.C. § 483. Both sections are derived from the National Bank Act of June 3, 1864, ch. 106 § 5, 13 Stat. 100 (codified in scattered sections of 12,18 U.S.C. (1970)). The Federal Deposit Insurance Corporation receives authorization for examination of State nonmember banks of the System in 12 U.S.C. § 1820. It is given the authority to examine other insured banks only in special instances and only for insurance purposes.

[390] The distribution of examination responsibilities of the Federal financial regulatory agencies is shown by circles in Figure 1, p. 143 *infra*.

[391] The examination reports on any given bank are often shared among the Federal agencies having regulatory authority over that bank. There is some doubt as to the efficiency of the division of the supervisory authority among the COC, FRS, and FDIC because of these agencies' failure to share, in a timely manner, information on suspected problems arising in the examination process. Kohlmeier, *supra* note 369.

Figure 1

Distribution of Responsibilities of Bank Regulation of the Federal Financial Regulatory Agencies

	Supervision	Membership	Insurance
National Banks	COC*	FRS	FDIC
State Member Banks FRS		FRS*	FDIC
State Nonmember Banks FDIC Insured		—	FDIC*

*In addition, the regulatory agency has examination responsibility.

The three regulatory functions of providing supervision, membership, and insurance to savings and loan associations are all concentrated in the Federal Home Loan Bank Board, which consists of the Federal Home Loan Bank Board, the Federal Home Loan Banks, and the Federal Savings and Loan Insurance Corporation. The three types of savings and loan associations[392] which receive these services and the component parts of the FHLBB which provide them are summarized in Figure 2. The Federal Home Loan Bank Board examines all of these savings and loan associations.[393]

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[392] These are: federally-chartered: State-chartered, FSLIC-insured, and State-chartered, uninsured by FSLIC.

[393] The Federal Home Loan Bank Board's examination responsibilities are shown by circles in Figure 2, p. 145 infra.

Figure 2

Distribution of Responsibilities for Savings and Loan Association Regulation of the Federal Home Loan Bank System

	Supervision FHLBB	Membership FHLB	Insurance FSLIC
Federally chartered savings and loan associations	ⓧ	X	X
State chartered FSLIC-insured	○	X	X
State chartered uninsured by FSLIC	○ *	X	

X = regulatory responsibility

○ = examination responsibility

* = Only for FHLB members

II. Civil Rights Responsibilities

A. Nondiscrimination in Mortgage Lending to Minorities

1. General

The Federal financial regulatory agencies are responsible for ensuring that the institutions they oversee are in compliance with applicable laws and regulations. One of the laws applying to banks and savings and loan associations, and which the regulatory agencies are thus responsible for overseeing, is Title VIII of the Civil Rights Act of 1968.[394]

Section 805 of the Civil Rights Act of 1968 provides that it is unlawful for any bank or building and loan association to deny a loan or other financial assistance for purchasing, constructing, repairing, or maintaining a dwelling because of the applicant's race, color, religion, or national origin.[395] That section also makes it unlawful[396] for such institutions to discriminate against borrowers on the grounds of race, color, religion, or national origin in fixing the amount, interest rate, duration, or other terms and conditions of such a loan. Additionally, the Federal financial regulatory agencies are charged with administering their programs and activities relating to housing and urban development in a manner affirmatively to further the purposes of fair housing.[397]

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[394] Overall responsibility for administering Title VIII is assigned to the Department of Housing and Urban Development. See Chapter I, Department of Housing and Urban Development, Section VIC *supra*.

[395] In August 1974, the Housing and Community Development Act of 1974 amended Section 805 of the 1968 act to include a prohibition against discrimination based on sex.

[396] Section 805 also applies to insurance companies and any other corporation or enterprise whose business consists in whole or in part of making real estate loans.

Pursuant to these responsibilities, each of the four Federal financial regulatory agencies has published requirements applicable to regulated financial institutions which engage in extending real estate loans. These institutions must display prominently an equal housing lender poster. The poster must be designed in accordance with published regulations of the agencies, which have been approved by the Department of Housing and Urban Development.[398] It must attest to the institution's policy of compliance with the nondiscrimination requirements of Title VIII. It must include also the address of HUD as the agency to be notified concerning any complaint alleging a violation of the nondiscrimination requirements of Title VIII.

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[397] Section 808(d) of the Civil Rights Act of 1968 so charges all Federal departments and agencies. Recently FDIC wrote to this Commission's Staff Director:

> You will note that the statute relates to "programs and activities relating to housing." It is our position that this Corporation has no programs and activities relating to housing within the meaning of that statute. We do, however, recognize that affirmative action programs may be encouraged absent specific statutory authority through such means as policy statements and guidelines. Letter from Reford J. Wedel, Deputy General Council, FDIC, to John A. Buggs, Staff Director, U.S. Commission on Civil Rights, Oct. 24, 1974.

[398] HUD's regulations for the lobby notice of nondiscrimination were first published on February 16, 1972. (See 24 C.F.R. § 110.) A sample poster appears on p. 149 infra. In addition to the information provided on that poster, the FHLBB poster informs persons who believe they have been discriminated against that they may discuss the matter with the management of the offending institution.

Moreover, any regulated institution which directly or through third parties engages in any form of advertising of real estate lending services must prominently indicate in the advertisement that it makes loans without regard to race, color, religion, or national origin. The regulated institutions are also prohibited from using in advertising any words, phrases, or symbols which express or imply a discriminatory preference or policy in violation of Title VIII. Additionally, written advertisements must include a facsimile of the "Equal Housing Lender" logotype[399] in order to increase public recognition of the nondiscrimination requirements and guarantees of Title VIII. For COC, FDIC, and FRS, the poster and advertising provisions are the only requirements placed on their regulatees. These requirements were published in the form of policy statements,[400]

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[399] The logotype is the equal housing symbol shown in the sample poster on p. 149 *infra*.

[400] The policy statements were first issued in December of 1971. After HUD's regulations on the design of the advertisement and lobby notices were issued (see note 398 *supra*), the regulatory agencies redesigned their requirements to conform to HUD's standards. COC's requirements are published at 37 *Fed*. *Reg*. 10518 (May 24, 1972). FDIC's requirements are published at 37 *Fed*. *Reg*. 8908 (May 2, 1972). FRS's requirements are published at 36 *Fed*. *Reg*. 25168 (Dec. 29, 1971) as amended by 37 *Fed*. *Reg*. 8578 (Apr. 28, 1972).

EQUAL HOUSING LENDER

We Do Business in Accordance With the Federal Fair Housing Law

IT IS ILLEGAL, BECAUSE OF RACE, COLOR, RELIGION, OR NATIONAL ORIGIN, TO:

- Deny a loan for the purpose of purchasing, constructing, improving, repairing or maintaining a dwelling or
- Discriminate in fixing of the amount, interest rate, duration, application procedures or other terms or conditions of such a loan.

IF YOU BELIEVE YOU HAVE BEEN DISCRIMINATED AGAINST, YOU MAY SEND A COMPLAINT TO:

Assistant Secretary for Equal Opportunity,
Department of Housing and Urban Development,
Washington, D.C. 20410.

or call your local HUD or FHA office.

thereby limiting the sanctions which may be used if the requirements are violated.[401] FHLBB, on the other hand, issued the lobby poster and advertising requirement as part of more extensive nondiscrimination regulations[402] which are fully enforceable.

2. Affirmative Requirements

Although the lobby and advertisement notices of nondiscrimination are useful tools to inform the public of the prohibition against discrimination in mortgage finance, they are not sufficient for ensuring against such discrimination. Much of the discrimination against minorities which occurs in mortgage financing is deeply ingrained in the practices which are followed by banks and savings and loan associations.[403] The types of discrimination which occur vary and may include, for example, outright refusal to make loans to minorities,[404] the refusal to extend credit to minorities for homes in residential areas occupied by nonminorities, the refusal to make loans to nonminorities in areas occupied by minorities, the refusal to make any loans in certain geographic areas (redlining), and the designation of certain areas as the only ones in which loans will be made to minorities.

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401. When the policy of a Federal financial regulatory agency which is not included in a regulation is violated, cease and desist powers cannot be used. In contrast, if a regulation is violated, the agency may use the full range of sanctions available. See Section V infra, for a further discussion of those sanctions.

402. These regulations are discussed further in Section IIA3a infra, and are published at 37 Fed. Reg. 8436 (Apr. 27, 1972) as amended at 37 Fed. Reg. 8865 (May 2, 1972).

403. See D.A. Searing, "Discrimination in Home Finance" 48 Notre Dame Law. 1113 (1973).

404. Id. Searing comments that this type of outright discrimination is seldom practiced today.

Some of the discriminatory practices are more subtle.[405] For example, in order to determine a client's ability to repay a loan, the institution may rely on credit checks by credit bureaus which make discriminatory judgments in assigning credit ratings.[406] Similarly, arbitrary refusal by a bank to consider stable income from a second source such as overtime or spouse's employment often discriminates against minorities.

Nonetheless, the Federal financial regulatory agencies have not yet required the institutions they oversee to analyze their own activities in order to assess the extent of discrimination in their mortgage finance transactions.[407] FHLBB, however, in a codified statement of policy,[408] has advised FHL Bank member institutions to examine their underwriting policies to insure that they are not unintentionally discriminatory in effect. None of the agencies has required the institutions to take positive action to overcome any deficiencies.[409] Thus, the institutions are not required to develop a written affirmative action program which would include such steps as the advertisement of available money in the minority press, the provision of bilingual services, and the appointment of a fair housing officer.[410]

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405. *Id*. and U.S. Commission on Civil Rights, *Mortgage Money: Who Gets It? A Case Study in Mortgage Lending Discrimination in Hartford, Connecticut* (1974) /hereinafter cited as Hartford report/.

406. Discrimination in credit checks is discussed in S.N. Sesser, "Big Brother Keeps Tabs on Insurance Buyers," *New Republic* (Apr. 27, 1968).

407. Such an assessment necessitates the collection and analysis of racial and ethnic data, including data on the number of loans made to minorities and on the racial-ethnic composition of the neighborhoods for which the loans are made. Even without such data, however, banks should be required to make and analyze estimates on the racial-ethnic composition of its borrowers. Racial and ethnic data collection is discussed further on pp. 188-190 *infra*.

408. This policy is discussed further on p. 154 *infra*.

409. The Federal Home Loan Bank reviews any written policies of nondiscrimination developed by its member institutions. Since FHLBB does not set standards for these policies, and in fact does not hold the existence of such policies as mandatory, FHLBB's actions are no substitute for an affirmative actions are no substitute for an affirmative action requirement.

410. In a large bank, this might be a full-time position with program and support staff. In smaller banks, it might be only a part time position.

3. Regulations

The Federal Home Loan Bank Board is the only financial regulatory agency which has extended the fair housing requirements it places on regulated institutions beyond the mere advertising and poster requirements concurrently agreed upon by the four Federal financial regulatory agencies. In fact, it is the only regulatory agency to have issued any requirements in regulation form. The Federal Deposit Insurance Corporation proposed regulations which were never adopted. Neither the Federal Reserve System nor the Comptroller of the Currency has issued or even proposed fair housing regulations or any other policy statements to supplement the poster and advertising requirements.

a. Federal Home Loan Bank Board Regulations

On April 27, 1972, the Federal Home Loan Bank Board published regulations[411] which contained two important fair housing innovations: (1) a prohibition against discrimination based on the racial, ethnic, or religious composition of the neighborhood for which the loan was being sought,[412] and (2) a prohibition against discrimination in the preapplication phase of the mortgage-lending process on the grounds of race, color, religion, or national origin.[413] In addition, the regulations contain a prohibition against racial, ethnic, and religious discrimination in lending services other than mortgage financing.

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[411] 37 Fed. Reg. 8436 (Apr. 27, 1972). These regulations are also published at 12 C.F.R. § 528 et seq. The regulations also contain a provision for nondiscrimination in employment by member institutions. See pp. 164-165 infra. The regulations were published in proposed form on January 19, 1972. The proposed regulations were essentially the same as those published in final form, except that the proposed regulations included requirements for racial and ethnic data collection which were not published in the final regulations. The FHLBB postponed the publication of that section of the regulation pending further study. See Section IV infra.

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[412] This provision prohibits redlining. In early February 1974, the Board's Office of General Counsel stated that this provision prohibited appraisers, when assessing property values, from taking into account information about the ethnic composition of the neighborhood or its changing character. The Office of General Counsel ruled that any lender which utilized appraisal forms calling for such information would be in violation of this provision. The General Counsel issued this ruling after the National People's Action on Housing, the Citizen's Action Program, and the Southwest Community Congress (three coalitions of white ethnic community groups in Chicago) complained about the use of such forms, asserting that the forms assisted in discrimination against members of their groups. In late March 1974, the General Counsel issued another important legal opinion which dealt with the application of the Board's nondiscrimination regulations to the practice of redlining. The General Counsel concluded:

> ...that the practice by member institutions of refusing to extend credit, and the practice of extending credit on terms which are less favorable than those usually offered, to borrowers whose security property is located within a predetermined geographic area or areas, because of the location of the property, violate section 528.2(d) if such practices have discriminatory effect against members of racial, ethnic or religious groups. Attachment to letter from Richard Platt, Director, Office of Housing and Urban Affairs, to John A. Buggs, Staff Director, U.S. Commission on Civil Rights, Oct. 24, 1974.

[413] This prohibition is an attempt to prevent the discriminatory discouragement of potential minority applicants from filing a written application. The regulations state:

> No member institution shall refuse or decline to...consider any application, request, or inquiry with respect to [a mortgage or home improvement loan or other service]... because of the race, color, religion, or national origin of any...person who
>
> (a) Makes application for any such loan...
>
> (b) Requests forms or papers to be used to make application for any such loan...
>
> (c) Inquires about the availability of such loan....[12 C.F.R. § 528.3 (1974)]

On December 17, 1973, FHLBB published guidelines to assist savings and loan institutions in implementing these regulations.[414] The guidelines encourage careful monitoring of loan underwriting standards[415] to ensure that they are not discriminatory. They state that each applicant's creditworthiness should be evaluated on an individual basis without reference to presumed characteristics of a group. They specifically warn that, "The use of lending standards which have no economic basis and which are discriminatory in effect is a violation of law even in the absence of an actual intent to discriminate."[416]

The guidelines outline what the Board considers improper emphasis on an applicant's past borrowing history. For example, an isolated experience in the distant past is not accepted as ground for denial of a loan if subsequent experience and present circumstances indicate stability. The Board indicates, too, that a policy favoring applicants who have previously owned homes may perpetuate prior discrimination. Moreover, the guidelines state that the denial of a loan in a neighborhood solely because of its age, income level, or racial composition is also recognized as being potentially discriminatory, since minority group persons are more likely to purchase used housing and to live in low-income neighborhoods.[417]

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[414] 38 Fed. Reg. 34653 (Dec. 17, 1973). These regulations are also published at 12 C.F.R. § 531.

[415] Underwriting standards are the criteria used by lending institutions to determine whether or not to issue a loan to an applicant.

[416] 12. C.F.R. § 531.8(b).

The guidelines further call for the savings and loan associations to consider the applicant's supplementary income[418] in ascertaining his or her ability to repay a loan. They state that statistics show that minority group members and low- and moderate-income families rely more often than others on such supplemental income. Finally, the guidelines contain a prohibition against sex discrimination in all lending activities of regulatees.[419] The Federal Home Loan Bank Board regulations and pursuant guidelines are an important step toward the development of a fair housing program. Neither the guidelines nor the regulations, however, go far enough, as they lack requirements for affirmative action;[420] racial, ethnic, and sex data collection; compliance reviews; and enforcement.

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[417] 12 C.F.R. § 531.8(c)(4) (1974).

[418] Supplementary income includes income from overtime, a second job, or an investment.

[419] See pp. 159-162 *infra* for a broader discussion of the section of the guidelines dealing with sex discrimination.

[420] The need for affirmative action is discussed in Section IIA2. *supra*; the need for racial and ethnic data collection is discussed in Section IV *infra*; FHLBB review of the fair housing practices of financial institutions is discussed in Section III *infra*.

b. Federal Deposit Insurance Corporation Proposed Regulations

In September 1972, the Federal Deposit Insurance Corporation published proposed regulations to supersede its 1971 fair housing policy statement.[421] They incorporated the elements of that statement and were stronger than the FHLBB-adopted regulations to the extent that they included a requirement for regulatees to collect racial and ethnic data, a requirement that regulatees appoint fair housing officers, and provisions for enforcement.[422] The proposed regulations, however, were inadequate.[423] In December 1972, FDIC held a 2-day hearing[424] on

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421. 37 *Fed. Reg.* 19385 (Sept. 20, 1972). This proposal was entitled Fair Housing Lending Practices. This is similar to the FHLBB's original proposal for regulations. See note 411 *supra*. FDIC, however, added provisions for a fair housing officer and for enforcement.

422. Section 338.8 of the proposed rulemaking stated that violations of Title VII and of any provision of the proposals constitute violations of law within the meaning of Section 8 of the Federal Deposit Insurance Act. Section 8 of this act permits cease and desist orders to be issued by the Board in the event of violations of the law and provides for termination of deposit insurance sanctions when there is noncompliance with the cease and desist order.

423. Like FHLBB's regulations and guidelines, they lacked a requirement for affirmative action and compliance reviews. See note 420 *supra*. They also lacked provisions for the prohibition of sex discrimination and nondiscrimination in regulatees' hiring practices.

424. The testimony from the hearing is contained in the FDIC publication, *Proposed Fair Housing Lending Practices Regulations, Hearing Before the Federal Deposit Insurance Corporation* Dec. 19 and 20, 1972.

its proposed regulations. This hearing was held in part because of a petition filed by the Center for National Policy Review on behalf of 13 public interest groups.[425] Witnesses included representatives of the petitioning organizations; other civil rights, public interest and women's rights organizations; Federal and State agencies; and banks[426] and savings and loan associations. Their testimony provided FDIC with ample information to make its final decision concerning the proposed regulations. However, over 22 months later FDIC was still attempting to determine what form the regulations would take.[427]

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[425] The petitioners requested each agency to invoke its rulemaking authority "for the purpose of establishing a fair and effective system of preventing racial discrimination in home mortgage finance." The petitioners urged the collection of racial and ethnic data (see Section IV, pp. 188-190 infra). The petitioners also recommended that the financial regulatory agencies provide for the documentation of all applications which were made in person but had not taken the form of a written request. Further, they requested that each builder or developer to whom a short term construction or long term mortgage loan is made be required to file with the lender a written assurance providing that the dwellings financed will be sold or leased without discrimination. The petitioning organizations were: The American Friends Service Committee, the Housing Association of Delaware Valley, the Housing Opportunities Council of Metropolitan Washington, the Leadership Council for Metropolitan Open Communities, Metropolitan Washington Planning and Housing Association, Inc., National Association for the Advancement of Colored People, National Association of Real Estate Brokers, the National Committee Against Discrimination in Housing, Inc., National Urban Coalition, National Urban League, Inc., the Rural Housing Alliance, the Washington Center for Metropolitan Studies, and the League of Women Voters of the United States. The Center for National Policy Review is a nonprofit organization for research and review of national policies having urban and racial implications. It is affiliated with the law school at the Catholic University of America in Washington, D.C.

[426] The representative for the American Bankers Association stated that he was speaking on behalf of the association's more than 13,000 member banks. The representative acknowledged that "there may be some isolated instances of discrimination in real estate lending by banks, but our Association is unaware of any, as none have been brought to our attention." Therefore, the representative concluded that it was unnecessary to saddle the banking industry with the requirements of the proposed regulation in the absence of a showing of discrimination by banks. FDIC, Proposed Fair Housing Lending Practices, Hearing before the Federal Deposit Insurance Corporation, Dec. 19 and 20, 1972, at 77. The representative speaking for the National Association of Mutual Savings Banks approved the adoption of the proposals, on the condition that similar proposals be adopted by the other three Federal financial regulatory agencies Id. at 108. The representative for the New York State Bankers Association disapproved the racial and ethnic data collection requirement, stating that it would place too great a burden on bank personnel. Id. at 116.

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[427] Following the hearings, FDIC reviewed the arguments presented and recorded its conclusions as to whether there were sufficient legislative bases for having issued the proposed regulations. Interview with Roger A. Hood, Assistant General Counsel; Paul M. Horvitz, Director of Research; F. D. Birdzell, Attorney; Edward Roddy, Director, Division of Bank Supervision; Joe S. Arnold, Acting Assistant Director, Administration; and John Stathos, Deputy Director, Division of Bank Supervision, FDIC, Dec. 19, 1973. The Corporation refused to provide the Commission with copies of memoranda of its conclusions, stating that "these are internal staff memoranda" and it did not feel it was appropriate to release them. Letter to Cynthia N. Graae, Associate Director, Office of Federal Civil Rights Evaluation, U.S. Commission on Civil Rights, from Roger A. Hood, Assistant General Counsel, FDIC, Jan. 8, 1974. In a recent communication, FDIC informed this Commission:

> We believe that we have basic authority to promulgate regulations generally aimed at implementing those provisions of Title VIII and particularly section 805 thereof (42 U.S.C. § 3605) prohibiting discrimination by banks and other financial institutions in the financing of housing.
>
> Our principal concern goes to the type of regulation which would be most useful in achieving the desired ends. Specifically, as a result of the December 1972 hearings... analysis of public comment, and extensive staff consideration both internally and interagency, on the proposed regulations, it became clear that such regulations may not achieve the end desired, principally because of deficiencies in the portion thereof dealing with recordkeeping. Hence, in cooperation with the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, and the Federal Home Loan Bank Board, we instituted [a pilot project for racial, ethnic, and sex data collection] with the primary objective of testing various types of data collection systems with a view to determining the one or combination of several systems that might, if incorporated in a regulation, be most useful in monitoring compliance by regulated institutions. Wedel letter, supra note 397.

The pilot project is discussed in detail on pp. 188-190 infra.

B. Nondiscrimination in Mortgage Lending to Women

Discrimination against women in mortgage finance is widely prevalent. For example, the arbitrary refusal of many savings and loan associations to count the full amount of a working wife's income in assessing a couple's ability to repay a mortgage loan was documented by a survey conducted by the Federal Home Loan Bank Board in 1971[428] regarding practices of savings and loan associations in all lending services. The survey revealed that 25 percent of the respondents would not count any of a 25-year-old married woman's income if she has two school-age children and holds a full-time secretarial position.[429] More than half of the mortgage lending institutions would limit credit to 50 percent or less of her salary.[430] Other forms of sex discrimination include refusal to lend to a married woman in her own name, investigation of a wife's birth control practice in connection with a mortgage loan application, reluctance or refusal to make loans to widows and divorced women who have no credit record in their own name,[431] use of different standards for credit applications of single women than for applications of single men, and requiring cosigners for single women but not for single men.[432]

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[428] Federal Home Loan Bank Board, Results of 74 Questionnaires Returned, undated internal report.

[429] The FHLBB also inquired about the effect of marital status on a loan applicant's eligibility but did not tabulate the results of that question.

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[430] On the basis of a mortgage finance study conducted in Hartford, Conn., this Commission found that sex discrimination was more blatant than racial and ethnic discrimination. The study revealed that traditional mortgage lending policies followed by Hartford mortgage lenders require sex discrimination. For example, as a matter of policy, the lenders often refuse to use a woman's income as a basis for making a loan. The lenders operate on the assumption that women are greater credit risks than men of comparable income and employment status. The survey disclosed that varying degrees of discrimination were practiced by different institutions and even by loan officers within the same institutions. Hartford report, supra note 405.

[431] Divorced or widowed women often will not have credit records in their own names, since they were likely to have been denied credit in their own names when they were married.

[432] For example, the results of a questionnaire distributed by the District of Columbia Commission on the Status of Women to 107 mortgage lending institutions revealed that policies relating to sex and marital status of applicants vary among the institutions in the Washington metropolitan area. Among the findings of the survey, based on the answers of 50 respondents, were that:

1. Frequently sex and marital status determine whether or not mortgage applications will be acted upon favorably.

2. Alimony and child support are often discounted as valid sources of income, regardless of their reliability.

3. Working wives' salaries are often not fully counted as part of a family income.

4. Some institutions ask applicants about their parental plans and birth control practices.

Government of the District of Columbia, Commission on the Status of Women, Sixth Annual Report, 1973.

Discrimination against women in mortgage finance is also serious because of its relationship to discrimination against racial and ethnic minorities. For example, a higher proportion of minority than nonminority families rely on the wife's salary for part of the family's income and thus would need to rely on the wife's income in purchasing a home.[433]

Prior to the passage of the Housing and Community Development Act in August 1974, which amended Title VIII of the Civil Rights Act of 1968 to include a prohibition against sex discrimination, the only agency which acknowledged that it had responsibility for ensuring against sex discrimination in mortgage finance was the Federal Home Loan Bank Board. FHLBB's guidelines included a statement that discrimination based on sex or marital status impedes the achievement of "the objectives of Federal laws intended to promote sound, economical home financing,"[434] and noted that such discrimination, "may violate

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433. Data from the Bureau of Labor Statistics show that in 1973 the labor force participation rate for minority wives is 54.0 percent as contrasted with a 41.2 percent rate for nonminority wives. Department of Labor, Marital and Family Characteristics of the Labor Force, March 1973, in press.

434. 12 C.F.R. § 531.

constitutional provisions which guarantee equal protection of the law for all persons."[435] These statements concerning sex discrimination, however, were only advisory and, unlike FHLBB's regulations, could not be enforced. The Board's regulations did not include any reference to sex discrimination but were limited to the Civil Rights Act of 1968 before it was amended to prohibit discrimination on the basis of sex.

The other three Federal financial regulatory agencies have been less progressive. They have indicated merely that they would support a Federal law prohibiting sex discrimination in mortgage financing but state that without a law they have had no authority to enforce such a prohibition upon their regulatees.[436]

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[435] Id.

[436] Interview with C. Westbrook Murphy, Deputy Chief Counsel, COC, Dec. 12, 1973; Hood interview, supra note 427; and interview with John E. Ryan, Supervisory Review Examiner, Division of Supervision and Regulation, FRS, Feb. 21, 1974. Wedel letter, supra note 397. In that letter, FDIC stated:

> ...we felt that in view of the fact that the Civil Rights Act of 1968 nowhere mentioned discrimination based upon sex, we lacked the authority to issue regulations concerning such practices. This question has now been resolved by enactment of the Housing and Community Development Act of 1974. Section 808 thereof prohibited sex discrimination including the discounting of a wife's income by lenders and the Act also amended Title VIII of the Civil Rights Act of 1968 to prohibit sex discrimination in real estate lending.
>
> Therefore, any regulation, which may eventually be issued by the Corporation to implement Title VIII, would contain provisions relating to sex discrimination. Id.

C. Nondiscrimination by Builders and Developers

Section 804 of the Civil Rights Act of 1968 makes it unlawful to discriminate in the sale or leasing of housing. This section applies, of course, to builders and developers who market the dwellings they construct. Nevertheless, FRS, FDIC, and COC continue to maintain that they do not have the statutory authority to require banks under their supervision to impose nondiscrimination requirements on builders and developers to whom they lend money for housing construction.[437] FHLBB alone does not make such a statement, but it still has not issued rules or regulations directing its regulatees to impose nondiscrimination requirements on builders and developers to which they make loans. One reason given for such inaction is that the problems of monitoring its regulatees to ensure their policing of builders and developers would be tremendous.[438]

Indeed, such monitoring would be a difficult task, although with cooperation from the other Federal financial regulatory agencies, HUD, the Veterans Administration, and the Farmers Home Administration (FmHA) at the Department of Agriculture, this task could be less onerous.[439] As of April 1974, however, none of the financial regulatory agencies had required banks to insert customer nondiscrimination requirements in their loan agreements with builders and developers.

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[437] Ryan interview, supra note 436; FDIC response to U.S. Commission on Civil Rights April 1973 questionnaire, contained in letter from Frank Wille, Chairman, FDIC, to Stephen Horn, Vice Chairman, U.S. Commission on Civil Rights, May 25, 1973, and Murphy interview, supra note 436.

[438] Telephone interview with Robert Warwick, Deputy Director of the Office of Housing and Urban Affairs, FHLBB, Mar. 7, 1974.

[439] HUD requires the builders and developers it assists to develop written affirmative marketing plans. See Chapter I, Department of Housing and Urban Development, Section IVA supra The Veterans Administration has proposed affirmative marketing plans but has never adopted them. See Chapter III, Veterans Administration, Section IVA infra. The Farmers Home Administration requires builders and developers to market FmHA-approved and assisted properties affirmatively but does not require written affirmative action plans, 7 C.F.R. § 1822.381 et. seq. (1972).

D. Equal Employment Opportunity by Regulatees

It is important that banks and savings and loan institutions provide equal employment opportunities for minorities and women. Employment discrimination is prohibited by Title VII of the Civil Rights Act of 1964[440] and Executive Order 11246, as amended.[441] In addition, equal employment opportunity in banks and savings and loan associations is related to the need for furthering the fair housing practices of these institutions. Banking traditionally has been a profession dominated by white males. High level banking officials have been white males and they have tended to establish policies geared to facilitate credit for white males.[442]

The Federal Home Loan Bank Board is the only one of the four financial regulatory agencies to adopt regulations prohibiting discrimination in employment practices.[443] All four agencies inquire from those member institutions they examine whether each institution has an affirmative action plan for equal opportunity in employment. If the institution is required to have a written affirmative action plan,[444] the agencies ask to see it. The agencies forward to the Equal Opportunity Office at the Department of the Treasury[445] information as to whether the institutions have such a plan on file. They do not evaluate the plans.

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[440] The responsibility for enforcing Title VII is vested in the Equal Employment Opportunity Commission. (See U.S. Commission on Civil Rights, The Federal Civil Rights Enforcement Effort -- 1974 -- Employment, Ch. 3 (in preparation).

[441] Executive Order 11246, as amended, prohibits discrimination on the basis of race, national origin, sex,and religion by Federal contractors. This order applies to banks and savings and loan associations. The responsibility for enforcing Executive Order 11246 is vested in the Office of Federal Contract Compliance in the Department of Labor, (See U.S. Commission on Civil Rights, The Federal Civil Rights Enforcement Effort --1974-- Employment. Ch. 2 (in preparation)), which in turn, has delegated the responsibility for the enforcement of this order as it applies to banks and savings and loan associations, to the Department of Treasury. On Feb. 25, 1971, the Under Secretary of the Treasury, Charls E. Walker, asked in writing for cooperation from the four Federal financial regulatory agencies by having the agencies check to see if banks and savings and loan associations have on file affirmative action plans. All the agencies agreed to fulfill this function. Telephone interview with David Sawyer, Director, Office of Equal Opportunity, U.S. Department of the Treasury, Apr. 12, 1974.

[442] Hartford report, supra note 405.

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[443] 12 C.F.R. § 528.7 and § 563.36. These regulations prohibit discrimination on the grounds of race, color, religion, sex, or national origin in hiring, promotion, or conditions of employment. They also prohibit discrimination against anyone because she or he has filed a complaint of discrimination. Telephone interview with William Nachbaur, Associate General Counsel, Office of General Counsel, FHLBB, May 1, 1974.

[444] Although Executive Order 11246 applies to all banks and savings and loan associations, only institutions with 50 or more employees must have a written affirmative action plan.

[445] See note 441 *supra*.

IV. The Examination Process

A. General

The purposes of the Federal financial regulatory examinations include insuring safety and stability in loans and investments, upholding competition in the banking community, and making certain that no applicable laws or statutes are violated. Examiners from each of the regulatory agencies review such matters as the condition and performance of regulated institutions, the quality of their operations, and the capacity of management to enforce compliance with Federal laws.[446] The appraisal of an institution's loans and lending policies, its investments and investment policies, and the ability of its management constitute the most exacting phase of the examination process.[447]

In the course of the examination, the examiners make a physical verification of the institution's assets and appraise their quality. They also review the institution's capital adequacy and liquidity and assess its internal system of credit and controls.[448]

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[446] See Department of the Treasury, Office of the Comptroller of the Currency, Comptroller's Handbook of Examination Procedure, September - March 1973; Ryan interview, *supra* note 436. Cecilia M. Gerloff, Acting Director, Office of International Home Finance, Federal Home Loan Bank Board, Editor, The Federal Home Loan Bank System 53 (1971). Ms. Gerloff has since become a senior financial analyst in the Board's Office of Finance.

[447] See, for example, Comptroller of the Currency, 1971 Annual Report, and Federal Deposit Insurance Corporation, Annual Report 1972.

[448] *Id.* and Gerloff, *supra* note 446; Board of Governors of the Federal Reserve System, 59th Annual Report 1972.

With the exception of FHLBB, the established pattern for bank and savings and loan association examinations by the Federal financial regulatory agencies is that they be conducted onsite and at least annually[449] on an unannounced basis.[450] The number of examiners needed to examine an institution varies with the size of the institution. For example, a large bank, such as the Riggs National Bank in Washington, D.C., or the Chase Manhattan Bank in New York City, may necessitate the use of as many as 200 examiners over a time span of several weeks. In contrast, three examiners can examine a small rural bank in about 1 week.[451]

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[449] For example, the National Bank Act requires that all national banks be examined twice in each calendar year by the Comptroller who may waive one such examination in a 2-year period or may have such examinations made more frequently, if necessary. COC, Annual Report (1971) supra note 447. The Federal Reserve Board conducts at least one regular examination during each calendar year with additional examinations if necessary. Board of Governors of the Federal Reserve System, supra note 448 at 208.

[450] Interview with Tom O'Nell, Head, Unit of Consumer Affairs, Division of Bank Supervision, FDIC, Jan. 14, 1974, and Ryan interview, supra note 436. The Director of HUD's Office of Civil Rights Compliance and Enforcement expressed doubt as to whether actual "surprise" examinations were conducted by any of the agencies. Interview with Kenneth Holbert, Director, Office of Civil Rights Compliance and Enforcement, Department of Housing and Urban Development, Feb. 12, 1974. FHLBB examinations are not made on an unannounced basis. Platt letter, supra note 412.

[451] Ryan interview, supra note 436.

B. Fair Housing Examination

1. Office of the Comptroller of the Currency

Although Title VIII of the Civil Rights Act of 1968 is applicable to the banks COC supervises, the Office of the Comptroller of the Currency has included no civil rights review in the examination process. Its examiner's manual, contrary to the obligation placed on COC under Title VIII, contains no mention of the examiner's fair housing responsibilities,[452] nor does it instruct the examiners to check for the equal opportunity lender poster or to monitor the banks' advertising as required by COC's policy statement of May 1972.[453]

2. Federal Deposit Insurance Corporation

The FDIC examiners' fair housing activity is largely limited to determining if the bank has made proper use of advertising and lobby notices of nondiscrimination, although examiners are instructed to report any violations of Title VIII which they observe.[454] While the requirements for these notices have been in effect since December 1971,[455] it was not until 1973 that FDIC included reference to these requirements in its Examiner's Manual.[456]

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[452] The manual used by the national bank examiners outlines what is to be examined and the methods of examination. The manual informs the examiners that all national banks with 50 or more employees are required to file an Equal Employment Opportunity (EEO) Report with the Treasury Department and the Equal Employment Opportunity Commission, and that these banks are also responsible for preparing a written affirmative action program. The examiner must record in the examination whether or not the bank has filed the EEO Report and whether the bank has such an affirmative action plan. Office of the Comptroller of the Currency, U.S. Treasury, Comptroller's Handbook of Examination Procedure, Sept.- March 1973.

[453] Murphy interview, supra note 436.

3. Federal Reserve System and Federal Home Loan Bank Board

Both the FRS and the FHLBB confine their examination of enforcement of Title VIII to the use of fair housing questionnaires[457] which were modeled after a questionnaire created in conjunction with HUD.[458] The questionnaire is completed by the examiner, both from her

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[454] FDIC stated:

> Our examiners have been instructed, initially in connection with a letter addressed to the Chief Executive Officers of all insured nonmember banks dated April 25, 1969, to determine, if possible, whether banks under our jurisdiction are violating section 805 of Title VIII of the Civil Rights Act of 1968. To quote in pertinent part from the above cited April 25, 1969 letter:
>
> > "Although primary authority and responsibility for administering the Act is placed in the Secretary of Housing and Urban Development (Section 808(a)), the Federal Deposit Insurance Corporation under the statute also has a responsibility to require compliance with the applicable provisions of the Act by those financial institutions under its jurisdiction. Accordingly, it is expected that all State nonmember insured banks will comply with the letter and spirit of this Federal law. The Corporation's examiners have been instructed to include in their reports any apparent violations of the Act disclosed during the course of any examination."
> > Wedel letter, supra note 397.

[455] See FDIC Policy Statement, supra note 400.

[456] FDIC recently noted that:

> ...the Statement of Policy under consideration here was first issued in December of 1971 and was amended and superseded effective in May of 1972. Copies of both statements were forwarded to all regional offices immediately following their issuance so that examiners might monitor compliance with their provisions. Our examiners are instructed to seek out apparent violations immediately after a regulation or policy statement becomes effective. Wedel letter, supra note 397.

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[457] The FHLBB questionnaire is slightly more inclusive than that used by the FRS. It is reproduced on p. 171. The questions which are also used by FRS are marked with an asterisk. Additional FRS fair housing questions are included at the bottom of p. 172.

[458] In 1971, HUD developed a questionnaire for savings and loan associations and banks to determine the policies and practices lenders use in making residential loans and to ascertain the degree to which discrimination in lending exists. The results were computed in 1972 for FHLBB-examined institutions (savings and loan associations). The results for COC-examined banks (national banks) and FDIC-examined banks (State nonmember banks) were never computed. FRS computed the results for its examined banks (State member banks). HUD's analysis of the responses from 582 savings and loan associations in the 50 cities with the largest minority populations indicated that 39 percent had never provided notice to customers that loan applications are considered without regard to race; 18 percent refused to make residential loans in one or more areas of high concentrations of minority citizens. Seventeen percent of the savings and loan associations admitted to considering the racial and ethnic characteristics of neighborhoods and 15 percent considered the proximity of low-rent or public housing projects. Twenty-nine percent of the associations were making fewer than 5 percent of their loans to minorities, although doing business in cities having from 16-74 percent minority population. Statistics on savings and loan management were also illustrative: 87 percent had no minority board or loan committee members. Data from individual cities were even more telling: In Washington, D.C., blacks and persons of Spanish speaking background were 61.7 percent of all homeowners (data for other minority homeowners are not published by city by the Bureau of the Census) but only two of the savings and loan associations responding stated that they made more than 25 percent of their loans to minorities. In Detroit, where blacks and persons of Spanish speaking background were 34 percent of all homeowners, no savings and loan association reported making more than 25 percent of its loans to minorities and only 2 exceeded 15 percent. U.S. Department of Housing and Urban Development, Office of Equal Opportunity, Private Lending Institution Questionnaire, Initial Report on Returns for 1972.

FHLBB QUESTIONNAIRE

CIRCLE FOR APPROPRIATE ANSWER WHERE INDICATED; OTHERWISE, SUPPLY DATA REQUESTED.

Name of Officer(s) interviewed ________________________________
Title(s) ________________________________

In the opinion of the officer interviewed:

*1. Are Loan Personnel and Executive Management familiar with the relevant provisions of Title VIII of the Civil Rights Act of 1968? YES NO

2. Are Loan Personnel and Executive Management familiar with Part 528 of the Bank System Regulations? YES NO

*3. Is a proper Equal Housing Lender poster located in a conspicuous place in each of the association's offices? YES NO

*4. Does association advertising comply with Section 528.4 of the Bank System Regulations and with Memorandum R-30? YES NO

5. Does the association have an established written policy concerning non-discrimination in lending? If so, attach a copy to this questionnaire. YES NO

*6. What is management's estimate of the population in the association's primary loan service area? If the association management believes it operates in more than one primary loan service area, due to the location of its offices, or for other reasons, then this question as well as questions 7, 8, 9, 10 and 11 should be answered separately for each such area in a separate attached memorandum. ________

*7. What is the estimated minority group population of such primary loan service area, or areas if more than one? ________

*8. What is the estimated number of real estate loans made by the association during the past calendar year? ________

*9. What is the estimated number of real estate loans made to minority group borrowers during the past calendar year? ________

*10. What is the estimated number of real estate loan applications received during the past calendar year? ________

* Federal Reserve System Questionnaire contains comparable questions concerning banks.

FHLBB QUESTIONNAIRE (continued)

*11. What is the estimated number of real estate loan applications received from minority group members during the past calendar year? __________

12. Within management's knowledge, have any complaints of alleged discrimination been filed against the association? (If the answer is YES, obtain from the attorney a letter setting forth all pertinent facts and the potential liability to the association.) YES NO

*13. Are there neighborhood or other areas where minority group members are concentrated, in such primary loan service areas, in which the association does not make real estate loans? If so, specify the areas and reasons for such inactivity. YES NO

*14. Does the association refuse to make loans to members of minority groups seeking to purchase property in areas where there are no or few minority group residents? If so, specify area and reasons for such refusal. YES NO

*15. Does the association administer loan rates, terms, fees, modifications, late charges, etc., without bias toward minority groups? YES NO

16. Does the association have an established formal policy concerning non-discrimination in employment? YES NO

*17. If it is required to do so, has it developed an Equal Opportunity Affirmative Action Compliance Program? YES NO

18. Are employees recruited, hired, placed, trained, transferred, discharged, recalled, and offered advancement opportunities without regard to race, color, creed, national origin or sex? YES NO

19. Do the employees of the association generally reflect the minority composition of the areas in which the association's offices are located? YES NO

Additional FRS Questions:

Are there neighborhoods or other areas of high concentrations of minority group members in which the bank refuses to make real estate loans? If so, specify the area and reasons for such refusal.

Are there any residential areas with no or few minority group members within the bank's primary service area where the bank has no, or relatively few, residential real estate loans? If so, specify areas and reasons for such.

*Federal Reserve System Questionnaire contains comparable questions concerning banks.

or his personal observations of the bank and its records and from information supplied by bank and savings and loan management. Many of the questions may be answered with a simple "yes" or "no." Thus, for example, the examiner has merely to record whether or not the bank's loan officers and executive management are aware of the provisions of Title VIII of the Civil Rights Act of 1968. The examiner does not have to determine how sophisticated this knowledge is, nor does he or she have to indicate what evidence was used to show the bank staff's awareness or lack of it.[459]

The questionnaires seek information as to whether the Title VIII poster is prominently displayed and whether the bank includes a statement as to its nondiscriminatory practices in all advertising of real estate loans. There is no instruction that the examiner must review a sampling of advertisements, however, and thus it is possible that the examiner will determine if such statements are used in advertising merely by asking one of the bank's officials.

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[459] A bank official may know that Title VIII prohibits discrimination in the sale or rental of housing without being aware that race, ethnic origin, and religion are the prohibited bases for discrimination; similarly, the bank official may be unaware of what constitutes discrimination in mortgage finance or what steps are necessary for effective implementation of Title VIII. For example, the official may be unaware that the absence of any Spanish speaking bank officials in a bank in areas such as San Antonio, Los Angeles, or New York, with large numbers of persons of Spanish speaking background, may act as a deterrent to those persons of Spanish speaking background who might wish to apply for a loan. The official might not realize the necessity for taking affirmative steps to encourage loan applications from minorities, who have frequently been discouraged by banks from making such applications because of discriminatory mortgage lending policies and practices.

The Federal Home Loan Bank Board, but not the Federal Reserve Board, asks if the institution being examined has an established written policy concerning nondiscrimination in lending and asks the examiner to obtain a copy if such a policy exists.[460] Both questionnaires ask whether there are neighborhoods or other areas of high concentrations of minority group members in which the bank either refuses to make or in fact has made no or few real estate loans; if the bank refuses to make loans to members of minority groups seeking to purchase property where no or few minorities reside; and if loan terms[461] are set without regard to the borrower's race, color, religion, or national origin. The FRS also asks if there are areas with no or few minority group members where the bank has no or few loans. Again, these questions require only "yes" or "no" responses, although explanatory material is solicited where the response might indicate a violation of Title VIII. Bank officials often know the "appropriate" responses to these questions[462] and without racial and ethnic data it is difficult to determine if loans to nonminorities are made on the same basis and in the same areas as to minorities.

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[460] In addition, the questionnaire solicits information about the employment practices of the savings and loan association being examined. The equal employment responsibilities of the financial regulatory agencies are discussed at pp. 164-165 supra.

[461] Loan terms include amount, interest rate, and duration of loan.

[462] Comments made by examiners at FRS Training School for Assistant Examiners, in Washington, D.C., Sept. 27, 1973.

The questionnaires ask for estimates, both for minorities[463] and for all persons, of the population residing in the bank's primary service area,[464] of the number of applications received for residential real estate loan applications, and of the number of residential real estate loans made. The primary service area is defined by the regulatory agencies as the principal geographic area in which the bank makes loans. It is possible that a bank or savings and loan association would define its primary service area to exclude those areas with a high proportion of minority residents. If so, failure to make loans to minorities might not be uncovered by the FRS and FHLBB questionnaires. If the institution failed to make loans to minorities, the examiner would be likely to excuse that fact on the grounds that there were no minorities in the service area. Purposefully defining the primary service area to exclude minority areas would of course be discriminatory. If minorities reside within the same proximity to the institution or its branch offices as do nonminorities, the regulatory agencies should insist that the primary service area be defined to include them.

The utility of the questionnaires is limited because they rely on estimates, which are no substitute for the collection, maintenance, and analysis of hard data on the race, ethnic origin, and sex of

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463. The FRS and the FHLBB define minority group as "Negro/Black, American Indian, Spanish American, Oriental or other minorities (such as Eskimo)."

464. The Federal Home Loan Bank Board makes provision for obtaining data on all service areas where the bank officials believe that the bank operates in more than one primary loan service area.

the population, loan applicants, and loan recipients.[465] Nonetheless, even in the absence of racial and ethnic data, there is some information which could be obtained by examiners to assess the bank's nondiscrimination posture. For example, the examination could be used to obtain the following types of information:

-- The criteria used by the institution's loan committee in evaluating applications, including any criteria based on information which is not on the application form. The examiner should ensure that each criterion used is nondiscriminatory. Such criteria as the appearance of the applicant, the character of her or his job (beyond the salary), or whether the applicant is a woman, are not relevant to the ability to repay a loan but might result in the disproportionate rejection of minorities or women. Similarly, excluding income from a part-time job or a wife's income in assessing a loan application tends to discriminate more severely against minorities, since the percentage of minorities with income from two salaries is greater than for nonminorities.[466] An understanding of these procedures is necessary in order to determine if minorities or women are being screened from the mortgage finance process prior to the submission of a written application.

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[465] The need for racial and ethnic data is discussed further at Section IV *infra.*

[466] Searing, *supra* note 403.

-- The extent to which previously established credit by minorities or women is taken into consideration in making a loan. Many minorities and women may have had difficulty in obtaining satisfactory ratings because of discriminatory credit practices.[467] Moreover, some institutions may refuse to make loans to persons who have never previously purchased a home. Since many minorities applying for loans for the purpose of purchasing a home are first-time home buyers, this practice may be discriminatory.

-- A description of the manner in which the bank handles any fair housing complaints it receives and data on their volume and nature. Examiners should also obtain information on the number and nature of any fair housing complaints against the bank or against builders and developers it finances which have been filed with public agencies charged with furthering or enforcing State and local civil rights laws.

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[467] See S.N. Sesser, supra note 406.

-- A list of any affirmative steps taken by banks to ensure fair housing, such as the collection and use of racial and ethnic data and the refusal to deal with builders and developers who discriminate. If such steps have been taken, they will provide evidence of a bank's commitment to equal opportunity in housing.

The questionnaires have been of little use in uncovering discriminatory mortgage finance practices. In fact, neither the Federal Reserve Board nor the Federal Home Loan Bank Board has ever interpreted the findings of the questionnaire as revealing discrimination, even though the agencies indicated that some responses required further questioning.[468] For example, some banks acknowledged that they refuse to make loans in areas of high minority group concentration. However, further responses in justification of refusing these loans were accepted by FRS as sound reasons for denial. Two examples of reasons given were (1) that insurance for the dwelling to be purchased was unavailable from private insurance companies[469] and (2) that the area was due for urban renewal.

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[468] Warwick interview, supra note 438 and Ryan interview, supra note 436.

Such excuses for refusal to make loans to minorities or in minority areas are often viewed by examiners as being supported by sound economic principles. They are, however, too often tools for maintaining the residential segregation which is characteristic of this Nation. It has been asserted that insurance companies have discriminated against minorities and inner city residents in determining whether or not to provide insurance and in setting the conditions for insurance.[470] Banks frequently provide significant benefit to insurance companies,[471] and banks should use this leverage to refuse to deal with insurance companies which discriminate. To do anything less is to pass on the insurance companies' discrimination to the banks' customers and thus to act in violation of Title VIII.

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[469] Banks and savings and loan associations require that the borrower obtain fire insurance on the dwelling to be purchased with the loan. Thus, the institution's investment will be protected in the event that fire damage so diminishes the value of the dwelling that the borrower ceases mortgage payments.

[470] See Sesser, supra note 406, for evidence that racial and ethnic factors have been considered by insurance companies in their decisions to provide insurance. Major insurance companies have considered such factors as crowded living conditions, sanitation of the applicants' residences, and personal reputation. The consideration of these factors may work to the detriment of minority loan applicants since through stereotyping they are often attributed to minorities. See also President's National Advisory Panel on Insurance in Riot-Affected Areas, Meeting the Insurance Crisis of Our Cities (January 1968). Meeting the Insurance Crisis of Our Cities discusses the reluctance of insurance companies to accept applications for insurance in the inner cities.

[471] For example, banks often secure insurance for borrowers to cover the mortgaged property and thus perform the function of obtaining customers for insurance companies.

Similarly, an examiner should not accept without further investigation a blanket statement by a bank or savings and loan association that no loans will be made in the minority residential area because that area is scheduled for urban renewal. Although a financial institution would understandably not want to provide a mortgage for a home that was going to be razed, the examiner should, for example, determine if all homes in the minority area are scheduled to be razed and what effect the urban renewal will have on property values of homes which will be left standing. The bank should then be required to give full consideration to any requests for mortgages on homes within the minority area which will remain the same or increase in value during the course of the urban renewal project.

C. Examiner Training

1. Office of the Comptroller of the Currency

The COC conducts formal training courses for its examiners several times yearly.[472] Since COC examiners have been assigned no fair housing responsibility, no fair housing training is afforded the national bank examiners. The responsibilities of the national banks under Title VIII are not mentioned at any point in the course.[473]

2. Federal Deposit Insurance Corporation

The FDIC examiner training program includes three different courses: for newly hired assistant examiners, senior assistant examiners, and recently appointed examiners. In 1973, one course, for newly hired assistant examiners, lasted 3 weeks.[474] A second course, conducted for senior assistant examiners, lasted 2 weeks.[475] A third course, for recently appointed examiners,[476] lasted 3 weeks in 1973.[477]

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[472] Murphy interview, supra note 436.

[473] Id. See also, Comptroller's Handbook of Examination Procedure, supra note 446.

[474] This course was repeated five times during the year. The new examiners often receive on-the-job training prior to participation in these programs.

[475] This course was repeated five times during the year.

[476] This course was repeated 10 times during the year.

[477] There is no assurance that the three courses given in 1973 will be repeated on the same schedule in 1974. Telephone interview with Tom O'Nel?, Head, Unit of Consumer Affairs, Division of Bank Supervision, FDIC, Mar. 12, 1974. FDIC recently noted:

> Actually the examiner training program is far more extensive, continuing for a minimum three-year period before a candidate achieves the rank of commissioned examiner. The courses mentioned account for only a small part of an examiner's training.
>
> Further, there are numerous provisions made available by the Corporation for the continuing education of commissioned examiners, including training and information in areas such as fair housing. Wedel letter,, supra note 397.

All examiners and assistant examiners are trained to check the quality of a bank's assets, the effectiveness of its internal management controls, and the bank's compliance with pertinent banking laws and regulations.[478] The examiners are trained first to examine thoroughly the bank's records and then to conduct followup questioning with the bank's management.

There is no civil rights presentation in the course for assistant examiners. Title VIII is noted briefly in the course for newly hired examiners and in the course for those with full examiner status. The presentation, which takes 10 to 15 minutes, consists of a discussion of what would constitute a violation of law or a circumvention of the Corporation's policy statement.[479] It covers both fair housing and equal employment opportunity.[480] The publication Equal Opportunity in Housing, an exhaustive compilation of laws, regulations, and decisions in the area of fair housing published by Prentice-Hall, Inc., is distributed to all examiners.[481] There is no review of its contents in the training program.

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[478] FDIC Annual Report 17 (1973).

[479] The policy statement is discussed on pp. 147-148 *supra*.

[480] Telephone interview with Tom O'Nell, Head, Unit of Consumer Affairs, Divison of Bank Supervision, FDIC, Apr. 18, 1974.

[481] Hood interview, *supra* note 427.

3. Federal Reserve System

Thrice yearly, the Board conducts a course for newly hired assistant examiners. This course, which has a maximum enrollment of 40, meets for 3 weeks and focuses on methods and procedures employed in operating a commercial bank. A course for examiners with 3 or 4 years of practice is offered twice yearly and lasts 4 weeks. The examiners are instructed in credit procedures, loan portfolio examination, and the determination of soundness of loans.[482]

Although fair housing is a regular part of the Board's bank examiner training program, only an hour of each training session is devoted to such issues. The examiners are presented with a copy of Section 805 of the Civil Rights Act of 1968. There is a brief presentation on the act by a member of the FRS legal staff and a lecture on three different types of discrimination in real estate lending: (1) the outright refusal to make loans to minorities; (2) redlining; and (3) the refusal to make loans to minorities in areas which have a low concentration of minorities. The examiners in each course discuss these types of discrimination as well as possible remedies. The examiners also discuss the Civil Rights Questionnaire. In the fall of 1973, the examiners were informed by their instructors that if racial data keeping is adopted by FRS, they will be responsible for its implementation.[483]

Overall, the course is superficial,[484] as it is limited to a discussion of overt discrimination. The examiners could be trained not only to uncover both overt and subtle discrimination, but also to evaluate possible justifications given by banks for potentially discriminatory actions.[485]

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[482] Two hundred and twenty-five examiners and assistant examiners have been trained since the course was started in 1971.

[483] As of the spring of 1974, a pilot racial and ethnic data collection program has been instituted. See Section IV infra.

[484] The Commission made recommendations concerning FRS's training program in a letter from John Hope, III, Director, Office of Program and Policy Review, U.S. Commission on Civil Rights, to Jack M. Egertson, Assistant Director, Division of Supervision and Regulation, Board of Governors of the Federal Reserve System. Feb. 14, 1974.

Exposure to additional fair housing material during the training program would also be beneficial to the examiners. Trainees could be provided literature on judicial and administrative interpretations of Title VIII. For example, copies of Equal Opportunity in Housing would be helpful.[486] Further, speakers could be invited from such Federal agencies as the Departments of Justice and Housing and Urban Development. These sources would familiarize the examiners with the requirements of Title VIII and inform them of the many traditional bank practices which can operate to exclude minorities from obtaining mortgages.

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485. For example, see pp. 178-179 supra, for a discussion of the spurious justifications provided by banks for failure to make loans in minority residential areas.

486. This was provided to FDIC examiners along with a copy of the transcript of the hearing before the Federal Deposit Insurance Corporation on proposed fair housing lending practices regulations held December 19 and 20, 1972. See pp. 156-158 supra.

The examiners could also be informed that it is appropriate to obtain information not only from interviews with the bank's management, but also from the loan officers. The training session could make clear to examiners that most banks are not likely to receive a perfect score on a thorough examination. In some cases, clearly identifiable deficiencies will be easily resolved on a voluntary basis. In other cases, it will be necessary for FRS to put pressure on the banks to come into compliance with Title VIII.

4. Federal Home Loan Bank Board

The 8-day training programs for new examiner staff which the Board conducts are held several times yearly.[487] The civil rights component in these programs is only 30 minutes in duration. It is presented by field examiners or assistant chief examiners and its contents vary from time to time. Mostly, the time is spent in keeping the examiners apprised of new FHLBB rules and regulations in this area. A discussion of FHLBB's nondiscrimination questionnaire also takes place.[488]

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[487] These programs are conducted by the Board's Office of Examination and Supervision.

[488] Telephone interview with Kenneth Butler, Employee Development Specialist. Office of Examination and Supervision, FHLBB, Mar. 6, 1974. The new examiners spend approximately 2 months in the field before participating in these training programs, so much of the training they receive is on-the-job. Id.

In addition to these cursory training programs for new examiners in May and June of 1972, FHLBB conducted a one-time, indepth training program in discriminatory lending and employment practices in which 400 of its 600-member examiner staff participated. The objectives of the program were to educate the examiners as to the legal powers the Board has to effect compliance with its rules, regulations, and policies, and as to the position, tactics, and responsibilities of other agencies such as the Department of Housing and Urban Development, the Department of the Treasury, and the Department of Justice regarding discrimination in lending and employment.

The training was conducted in two phases, the first being six 2-day seminars throughout the country[489] providing the examiners with information on the legal framework of FHLBB's regulatory structure, the Board's position with regard to discrimination, and the means of detecting and preventing discrimination. This phase utilized speakers and discussion leaders from savings and loan associations, several offices within the Board,[490] and other Federal agencies including HUD[491] and the Departments of Justice and

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[489] These seminars were conducted in Atlanta, Boston, Dallas, Chicago (twice), and San Francisco.

[490] These included the Office of Examination and Supervision, Office of General Counsel, and Office of Housing and Urban Affairs.

[491] HUD assisted in designing this training course. It instructed FHLBB examiners as to HUD's investigation and conciliation regulations. HUD also distributed its field operations handbook on how to conduct investigations. (See HUD Title VIII Field Operations Handbook. (1971)). Interview with Kenneth Holbert, Director, Office of Civil Rights Compliance and Enforcement, HUD, Feb. 12, 1974.

Treasury. The second phase consisted of twelve 2-day work sessions which incorporated the techniques of particular case studies and role playing in order to enable the examiners to better understand the dynamics of discrimination and ways in which to effectively enforce compliance with equal opportunity laws in employment and lending.[492]

It is necessary that all of the financial regulatory agencies conduct this type of program for their examiners. Although in the summer of 1972 FHLBB indicated that it would provide this training to the remaining 200 examiners, the program has not been repeated.[493]

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492. Federal Home Loan Bank Board, Office of Examination and Supervision, Discrimination Training Plan, "Plan, Objectives, Agenda, Speakers, Logistics," May 1972. A pilot session was held in Washington, D.C., on May 4-5 for the first phase of the program for a small audience of examiners. These examiners served as moderators in the second phase. Id.

493. FHLBB felt that the examiners who had participated in the program could train other examiners as to what they had learned in these sessions. Telephone interview with Francis Passarelli, Assistant Deputy Director of the Office of Examination and Supervision, FHLBB, Mar. 8, 1974.

IV. Racial, Ethnic, Sex, and Property Location Data

The most significant step the four Federal financial regulatory agencies have taken during fiscal years 1973 and 1974 has been their establishment of a 6-month trial program of racial, ethnic, and sex data collection in selected areas throughout the country.[494] This trial program utilizes three procedures for data collection, each to be employed in six Standard Statistical Metropolitan Areas (SMSA's). Under the first procedure,[495] data are to be obtained on sex, marital status,[496] and race or ethnic origin[497] of the applicant and spouse. Under the second procedure[498] data are obtained only on the race or ethnic origin of the applicant. Under the third procedure,[499] financial information

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494. This program began on June 1, 1974. The Federal Home Loan Bank Board published notice of the program, 39 Fed. Reg. 12110 (Apr. 3, 1974). The Office of the Comptroller of the Currency published notice of this program at 39 Fed. Reg. 12363 (Apr. 5, 1974). As of April 17, 1974, the FRS and the FDIC had not published notice of the program in the Federal Register. Both issued press releases on April 1, 1974, on the program. Federal Reserve Press Release, Apr. 1, 1974, untitled, and FDIC News Release, "FDIC Joins Other Agencies in Test Program Using Racial and Ethnic Questionnaires to Defeat Unlawful Discrimination in Mortgage Lending," Apr. 1, 1974.

495. The first procedure is being used in Atlanta, Ga., Buffalo, N.Y., Chicago, Ill., San Antonio, Tex., San Diego, Cal., and Washington, D.C.

496. The categories in this and the third procedure are single, married, divorced, and widowed.

497. The categories for this and the other two procedures are American Indian, Asian, Black/Negro, Spanish Descent, White, and Other.

498. The second procedure is being used in Baltimore, Md., Galveston-Texas City, Tex., Jackson, Miss., Jersey City, N.J., Tampa-St. Petersburg, Fla., and Vallejo-Fairfield-Napa, Cal.

499. The third procedure is being used in Bridgeport, Conn., Cleveland, Ohio, Memphis, Tenn., Montgomery, Ala., Topeka, Kan., and Tucson, Ariz.

is requested, such as the combined income of the applicants, the amount of their debts and assets, and the size of loan requested, as well as data on race or ethnic origin, marital status, and sex. In all cases, this information is to be obtained from the loan applicant. The applicants are informed that the information on race and ethnic origin is requested as part of a program to assure equal treatment under the Civil Rights Act of 1968.

In addition, the census tract[500] in which the property to be purchased is located must be recorded by the lending institutions using the first and third procedures, and the zip code of the subject property is required in the other procedure. This will enable the Federal financial regulatory agencies to determine from census data the racial and ethnic composition of the area in which the home is to be purchased and thus ascertain if the regulatees are continuing to make loans to minorities only in minority areas and to nonminorities only in nonminority areas. Moreover, all information is required to be stated in such a way that it could be later correlated with whether or not the loan application was approved, thus enabling an objective determination of whether or not the lending institutions' acceptance or rejection of loan applications has been discriminatory.[501]

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500. A census tract is a division of a city or surrounding area for statistical purposes. The average census tract has about 4,000 residents.

501. The forms used in the first and second procedures must be placed in the applicant's loan file if the application is approved, or retained for 3 years along with the application and supporting materials if the application is rejected. The form used in the third procedure contains a space for a notation to indicate whether the application was rejected.

This trial program, which is only a beginning, has been much delayed in its development.[502] As early as 1970 this Commission recommended that the financial regulatory agencies collect racial and ethnic data on loan applications.[503] In March 1971, the Center for National Policy Review, on behalf of 13 public interest organizations, filed petitions requesting each agency to institute racial and ethnic data collection by its regulatees.[504]

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[502] From December 1972 until March 1974, all of the regulatory agencies have been involved in reviewing the need for racial and ethnic data collection. The FDIC hearing addressed this issue. (See note 425 *supra*.) Members of FRS's staff also participated in the 1972 FDIC hearing, and subsequently initiated discussions with the other financial regulatory agencies concerning collection of racial, ethnic, and property location data. The Federal Reserve System, as well as the other agencies, has attempted to identify various methods that could be used to make civil rights monitoring more effective. For this purpose, the System obtained census tract data to study the feasibility of analyzing loan data to detect discriminatory lending patterns. The System's examiners have been extremely critical of a data collection requirement, contending that they are already overextended without such a requirement, that they have too many statutes to enforce, that they are not sociologists, and that they have insufficient time for their equal opportunity duties. Interview with Mr. John McClintock, Assistant Director, Division of Supervision and Regulation, FRS, Aug. 22, 1973. The Office of the Comptroller of the Currency, too, has been critical of racial and ethnic data collection but has studied various methods of collecting such data.

The FHLBB originally proposed racial-ethnic data collection in its regulations. In reaction to the proposed regulations FHLBB received about 200 letters of protest from Federal Home Loan Bank member institutions. Although FHLBB never completely discarded the possibility of collecting these data, it was resistant to requiring their collection without corresponding requirements by the other Federal financial regulatory agencies, since it did not want to place savings and loan associations at a competitive disadvantage. Warwick interview, *supra* note 438.

[503] U.S. Commission on Civil Rights, *The Federal Civil Rights Enforcement Effort* 360 (1970).

[504] See note 425 *supra* for a discussion of the petitioners' requests.

V. Complaints

Pursuant to an agreement with the Department of Housing and Urban Development, the equal housing lender poster which is required to be on display in the lobby of Federal and State banks and savings and loan associations directs that complaints of housing discrimination be made directly to HUD. HUD does not routinely notify any of the Federal financial regulatory agencies of the number of complaints it has received against their member institutions.[505] Some complaints have been forwarded directly by complainants to the regulatory agencies rather than to HUD, and HUD sometimes refers complaints to the regulatory agencies. These are generally processed promptly by the regulatory agencies themselves.

A. Office of the Comptroller of the Currency and Federal Reserve System

As of early 1974 neither the Federal Reserve Board nor the Office of the Comptroller of the Currency had received any complaints against their regulatees alleging racial, ethnic, or religious discrimination in lending for residential purposes.[506] Neither of these agencies had checked with HUD to determine if any housing complaints had been filed against the institutions they regulate. Neither of the regulatory agencies had any agreement with HUD under which HUD would notify them of any complaints of discrimination. Nonetheless, COC's Deputy Chief Counsel stated that he was under the impression that HUD would automatically notify COC if any complaints against national banks were filed with HUD.[507]

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[505] Holbert interview, *supra* note 491. HUD does, however, occasionally inform regulatory agencies of an isolated mortgage finance complaint.

B. Federal Deposit Insurance Corporation

Investigations of complaints are normally handled by FDIC's regional offices with assistance from the Legal Division.[508] Complaints are also sometimes forwarded to the Unit of Consumer Affairs in the Division of Bank Supervision in the central office, which may then coordinate the handling of the complaint. If, after reviewing a complaint, the unit finds it worthy of administrative proceedings, it is sent to the General Counsel for action.[509]

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506. Telephone interview with C. Westbrook Murphy, Deputy Chief Counsel, COC, Mar. 8, 1974; and Ryan interview, *supra* note 436. FRS routinely contacts the 12 Federal Reserve Banks to inquire if they have received any fair housing complaints, but up to February 14, 1974, they had received none.

507. 1973 Murphy interview, *supra* note 435.

508. Wedel letter, *supra* note 397.

509. O'Nell interview, *supra* note 550.

The unit has on file six civil rights complaints dating from 1969 through 1973.[510] Two of the six complaints were referred directly to it by regional offices. One complaint, dated June 7, 1973, was initially lodged with the Texas Department of Banking and was then forwarded to the unit. The complainant, a black, alleged that he was refused refinancing of some land he owned and stated that he saw no justifiable reason for being denied that loan.

This complaint was reviewed by the General Counsel. The General Counsel concluded that it was "beyond purview of this Department to order a State bank to fund any loan application." Moreover, since there was no dwelling on this land, the Office of General Counsel determined that this complaint was not within the jurisdiction of Title VIII.

FDIC's view of this complaint was unjustifiably narrow. Admittedly, this case demonstrates the fact that no Federal statute sufficiently prohibits discrimination in lending. Nonetheless, if the discrimination which was alleged did in fact occur, it would have been a violation of the Constitution. Further, the Civil Rights Act of 1866 provides that "all citizens of the United States shall have the same right, in every State and Territory, as is enjoyed by white citizens thereof to inherit, purchase, lease, sell, hold, and convey real and personal property."[511] It is in the interest of FDIC to determine whether or not the alleged illegal action occurred, and the Federal Deposit Insurance Act, which created the Corporation, provides that drastic measures[512] are available to it if a bank engages in "an unsafe or unsound practice." If such complaints as this are generally left uninvestigated, then it is impossible for FDIC to judge whether banks are engaging in the unsound practice of failing to make loans to persons solely on the basis of race. Moreover, FDIC should have informed the complainant of the right to bring a private suit, rather than merely indicating that it could be of no assistance.[513]

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[510] Until January 1974, the unit had not filed these civil rights complaints separately from their other complaints. The unit did not trace patterns of discrimination which called for affirmative action in any insured banks, individually or as a whole. This Commission was informed that as of January 14, 1974, the civil rights complaints would be filed separately. O'Neil interview, supra note 450. In October 1974, this Commission was informed that:

> The Consumer Affairs Unit has separated the complaints received by it from other correspondence into a single file. However, even under the old filing method the Consumer Affairs Unit had ready access to specific complaints received by it and also knew both the number and content of the civil rights complaints. Wedel letter, supra note 397.

A second complaint which demonstrates the laxity of the Corporation in arresting discriminatory practices is that of a couple from Columbus, Ohio, dated April 23, 1973, which alleged racial discrimination in home finance. A copy of the couple's complaint was forwarded to the unit by the Housing Opportunity Center of Metropolitan Columbus which expressed the opinion that the loan was being denied because it was for a home in an area in which no other minorities lived. The complaint which the center forwarded did not include the name of the bank which had allegedly denied the loan. The executive director of the center stated that he had directed the couple to write to the central office of FDIC in order to provide them with the name of the bank. No letter to FDIC was forthcoming, so the name of the bank which had allegedly discriminated remained unknown to FDIC. The subject was, therefore, dropped. No followup attempt was made by FDIC to contact the couple even though the center had forwarded their address to FDIC.[514]

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[511] 42 U.S.C. § 1982 (1971). Although the language of this act was available for many decades, it was not applied for the fullest protection of the rights of minorities until Jones v. Alfred H. Mayer Co., 392 U.S. 409 (1968). FDIC does not concur in this Commission's conclusion that the decision in Jones v. Mayer may have applicability to this situation. Wedel letter, supra note 397.

[512] FDIC sanctions are discussed further in Section VI.

[513] In contrast to the actions taken by FDIC in this case, HUD staff are instructed to inform complainants of their right to sue in Federal district court and of organizations which may assist them in this effort. HUD, Title VIII Field Operations Handbook (1971). FDIC stated:

> ...as a matter of practice, the Corporation frequently advises persons who complain to it of various problems encountered with insured banks or banks under its direct supervision that they seek the advice of private counsel, assuming that the Corporation has no jurisdiction in the area. However, in this particular case, we would have deemed such advice inadvisable since the complainant's right of action was questionable....Wedel letter, supra note 397.

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[514] FDIC stated that "The complainant specifically requested that no action be taken while the individuals were in the process of obtaining a loan." Wedel letter, supra note 397.

FDIC's failure to conduct an investigation was repeated in another case, in which the complainant alleged discrimination by one of two banks in Henryetta, Oklahoma, without specifying the name of the bank. The FDIC has supervisional authority over only one of the two banks, and hence wrote the complainant to inquire the name of the bank involved. The complainant did not respond to this inquiry so the case was dropped. Since an investigation of this complaint would have involved the review of only one bank, it would have been appropriate for FDIC to review this bank to determine whether or not its practices were generally discriminatory.

A third complaint was an anonymous one dated October 6, 1972, against a bank in Florida which is under the jurisdiction of FDIC. The complaint was a brief, general allegation that the bank makes no loans to blacks. FDIC made no investigation of this complaint but merely stated that an investigation of the allegation was scheduled to take place during the next annual examination of the bank.[515]

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[515] O'Neil interview, *supra* note 450. It is uncertain when the annual examination was scheduled, since the different regional offices conduct examinations at different times and the date of the last examination in this bank's particular region was not available. *Id.* In October 1974, FDIC wrote to this Commission:

> While we appreciate your view that the Corporation should take an active stance in following up complaints, given the demands placed on our examination staff, we feel that it is not unreasonable to require that a complaint be sufficiently specific to provide us with a basis on which to proceed. Notwithstanding the vagueness of [this] complaint, it was investigated at a regular examination in late 1972 and no evidence of racial discrimination in real estate lending was discovered. Wedel letter, *supra* note 397.

Another complaint was received by FDIC from a white owner of a mobile home park who alleged that a bank had refused to make loans to blacks for purchasing his mobile homes although that bank was making such loans to whites.[516] The complainant supplied names of persons who had allegedly been discriminated against, and these persons were interviewed by the examiner and asked to supply proof of the discrimination. The examiner reported that they were unable to do so. On the basis of these interviews and the examiner's observation that blacks were in the lobby of the bank, the examiner concluded that no discrimination had taken place.[517]

While FDIC files did not indicate what the examiner would have regarded as proof of discrimination, it would appear that he or she should have assumed some responsibility for determining whether the bank had refused to make loans to applicants because of their race. In fact, FDIC did not review the bank's files to determine whether or not the bank ever received and referred applications from the minorities named in the complaint or if it had made any loans for mobile homes.

C. Federal Home Loan Bank Board

It is FHLBB's policy to investigate any complaint of lending discrimination by one of its member institutions if the complaint was not initially sent to HUD or the Department of Justice. Although the FHLBB has offered assistance to HUD in handling complaints which have initially been lodged with HUD, FHLBB and HUD do not yet exchange information on complaints on a regular basis.

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[516] The complainant argued that these refusals were hindering him in paying off a loan he owed to the same bank.

[517] FDIC stated, "We understand that the FBI also investigated this matter and arrived at the same conclusion." Wedel letter, supra note 397.

One other complaint of racial discrimination in mortgage financing was lodged on December 30, 1969, with HUD. HUD requested FDIC's assistance in its investigation. An FDIC examiner, in conjunction with a HUD investigator, concluded that there was no racial discrimination. Since incomplete data were contained in FDIC's files about the complaint, it was impossible to assess whether the examiner's decision to close the subject was justifiable.

The Federal Home Loan Bank Board has had no standard procedures for handling civil rights complaints or any other complaints which it might receive.[518] Until recently, all complaints initially received in the central office were handled by one of three offices: the Office of Housing and Urban Affairs, the Office of Examination and Supervision, or the Office of the General Counsel. In October 1974, the Board's internal procedures were clarified to provide that all discrimination inquiries or complaints should be referred initially to the Office of Housing and Urban Affairs. A specific complaint against a named institution is then forwarded to the Office of Examination and Supervision and is then generally sent to the supervisory agent[519] at the Federal Home Loan Bank in the region of the institution against which the complaint was filed.[520] The supervisory agent communicates with the institution to determine if it can justify its actions or, if not, whether it is willing to take corrective action.[521]

Sometimes the complainant is also contacted. For example, the complainant is required to provide the name of the institution the complaint concerns if she or he has not already done so. However, there are no established guidelines as to when contacting a complainant is necessary.[522]

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[518] The bulk of complaints received by FHLBB involve allegations of illegal actions in such matters as setting interest rates or terms for repayment.

[519] A supervisory agent is an officer of one of the 12 Federal Home Loan Banks who is designated by the Board to act on behalf of the Board and the FSLIC for the purpose of handling problems which arise in the enforcement of regulations.

[520] The supervisory agent would take this step for any complaint, whether or not it involved discrimination.

[521] Platt letter, *supra* note 412.

If the supervisory agent does not receive what she or he considers a satisfactory justification for an institution's behavior, or if the institution does not voluntarily achieve compliance, an examiner is sent in to make an investigation. The examiner in turn makes a report to the chief examiner in the regional office. The report is sent to Washington where a decision on the complaint's status is made.

Most complaints, however, are settled in the field without ever having been brought to the attention of the central office. The examiners are often not accountable to anyone for the judgments they make on complaints. Thus, there is no consistent overseeing of complaints to ensure that the same standards of evaluation are being applied by individual examiners.[523]

While FHLBB has not found that the absence of more uniform procedures for handling its complaints creates a problem, this system is inadequate for dealing with civil rights complaints. Few examiners have the expertise to handle fair housing complaints, as is shown by the disposition of the few fair housing complaints FHLBB has received.

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522. This contrasts sharply with procedures outlined for HUD staff in HUD's Title VIII Field Operations Handbook of March 1971. The Handbook instructs that both the complainant and the respondent be personally interviewed. This applies to complaints made by telephone, in writing, or in person and to complaints received by an investigator in the field. The investigator is instructed to obtain further information from the complainant if that provided by the respondent does not substantiate that provided in the complaint or in the initial interview with the complainant.

523. Examiners must file reports on all discrimination complaints investigated by them. The appropriate chief examiner, supervisory agent, and regional director of the Office of Examination and Supervision review the findings of fact and conclusions of each such report. Platt letter, supra note 412.

Five discrimination complaints were brought to the attention of the FHLBB's central office between July 1972 and January 1974.[524] One complaint, alleging racial and sex discrimination, was from a black woman in Arkansas who received a loan for well under the amount for which she had applied.[525] The association maintained that the house was in an area which was old and deteriorating and that the loan finally made was well over the value of the homes in the area.[526]

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[524] These complaints, however, cannot be accepted as the total number of complaints against FHLBB-supervised institutions, since complaints received by the FHLB's or by FHLBB's regional offices would not necessarily be brought to the attention of the central offices.

[525] The association made the woman a loan for $22,000 rather than $30,000.

[526] The records did not indicate whether or not the home was in a black neighborhood. The association maintains that the value of the houses in the area ranged from $6,000 to $20,000.

The director of the regional FHLB asked the chief examiner to make an investigation. In the course of that investigation, the manager of the association informed the examiner that 20 to 25 percent of all loans made by the association were to blacks and that 60 percent of all home improvement loans were to blacks. Although this information should not be taken as the only determinant of the merits of the complaint in question, the examiner concluded solely on the basis of the manager's statements that no discrimination had taken place.[527]

A complaint dated June 12, 1972, was sent to FHLBB by three Congressmen. The central office sent the complaint to the supervisory agent in the region. The complainant, who was white, had applied for and been denied a mortgage loan of $30,000.[528]

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[527] Moreover, the examiner never sought verification of any of the association's statements, including those about the value of the house or other homes in the neighborhood. This complaint demonstrates the need for racial-ethnic and property location data collection so that examiners will be able to rely on records for assessing loan-making policies rather than depend on estimates by bank personnel.

[528] The loan was requested for 90 percent of the purchase price of the house.

The complainant alleged that the savings and loan official had said that the reason for the denial was that another home in the subdivision had been sold to a black, and thus the value of the subdivision would be declining. The savings and loan official denied having made the statement and stated that the reason for denying the loan was that the house had a substandard frame and was generally of inferior construction.

FHLBB staff decided that there was no way to substantiate either of the two statements and, therefore, took no action. Although there was clearly no way to verify either the complainant's or the bank official's statement, there are a number of things FHLBB could have done to determine whether the denial of the loan was justified. For instance, the examiner could have determined if other loans were being made by the association in the neighborhood, whether they were to whites or blacks,[529] and what kind of terms the loans were being made on and on what type of property. The examiner could also have attempted to discover whether similar loans had been made prior to the black family's moving into the neighborhood if, in fact, this had taken place.[530]

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[529] In the absence of racial and ethnic data, this information might be obtained by interviewing local minority interest groups and residents and purchasers of subdivision homes.

Another complaint was from a black male who had applied for a $20,000 construction loan to build a home in North Carolina. The savings and loan association informed the complainant that before he could file an application for the loan, he would have to submit a set of plans and specifications for the home. Although the complainant did produce a picture and a floor plan of the house, these were not considered extensive enough.[531] The complainant was instructed to submit specifications for the home and a construction contract with a builder before the application could be filed. When the complainant provided new plans for his proposed home, he was again instructed to submit specifications and a contract with the builder. The complainant never filed a written application and the savings and loan association cited the complainant's failure to do so as the primary reason for not making the loan.[532] It appears, however, that the association had come up with so many conditions pending the acceptance of a written application that the complainant may well have given up hope of obtaining the loan from the particular association.[533]

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[530] Another complaint which demonstrates the examiners' dependence on the bank personnel's statements rather than objective observations was from a black who wished to purchase a 30-unit apartment building in a black neighborhood for $300,000. The complainant asked for and was denied a $225,000 loan. He stated that the building was less than 8 years old and that the purchase price was $60,000 less than the market value. He also alleged that it would cost $400,000 to replace the apartment building. The savings and loan association reported that the building was deteriorated. It told the complainant that if he acquired the property and brought it into good physical condition the association would consider making him a loan. The complaint files did not indicate whether the examiner had looked at the building or required an appraiser to do so in order to concur with bank personnel's statements regarding deterioration.

[531] The association also conducted a credit check on the complainant which they found troubling. The complainant answered that the problems which showed up in the credit check were caused by his son rather than himself. Accordingly, the association wrote to the complainant and reportedly informed him how he could straighten out his credit report.

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[532] The FHLBB wrote back to the complainant, restating the loan association's reasons for denial of the loan and inviting a response. The complainant never wrote back to FHLBB.

[533] The complainant may have believed that he could not enter into a construction contract until the savings and loan association had given him a promise of financing. According to Federal Home Loan Bank Board officials, a promise of financing from the association would not be a requirement for signing a construction contract, as one of the provisions of the contract could provide that the contract is subject to the buyer's obtaining adequate financing.

In addition to the complaints of discrimination FHLBB received during fiscal year 1973,[534] it received a number of complaints alleging omission of a nondiscrimination statement in advertising. FHLBB officials, too, had noted such omissions.[535] FHLBB could not state the number of such violations which were uncovered.[536] According to FHLBB, appropriate corrections were made in each instance.[537]

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[534] A complaint which was received by the FHLBB from HUD in January 1973, but which was not covered by Title VIII of the Civil Rights Act of 1968, demonstrates initiative by the FHLBB in undertaking an investigation. The complainant wished to receive refinancing for a loan on a small shopping center he owned in a black community in California. He had attempted to get financing through his broker from nine savings and loan associations and some mortgage companies and commercial banks. The complainant alleged that although he was denied the loan, owners of shopping centers in nonblack neighborhoods had received such loans. Although the loan being sought did not involve financing a dwelling, the FHLBB ordered an investigation of the situation, arguing that the denial of the loan could constitute a violation of the Civil Rights Act of 1866. Therefore, an examiner was sent in and instructed to interview both the complainant and his broker. It was deemed impractical to interview representatives from all nine savings and loan institutions. From that point onward, FHLBB's handling of the complaint was deficient. Through conversations with the broker, the examiner concluded that all of the broker's inquiries for loans had been conducted over the telephone. The broker stated that most of the replies indicated that the associations were not making commercial loans or were not making loans in that "particular area." Further discussion with the broker disclosed that he had not made further attempts to acquire a loan and that an appraiser had not been called in to estimate the value of the property. The examiner concluded that, because there was a lack of persistence in acquiring the loan, further action was not warranted. This raises the question of how many times and in what manner a discriminatory denial of a loan would have to be made before it would be considered a violation of law by the FHLBB examiners. Although discriminatory action by banks was also alleged to have taken place, FHLBB did not forward the letter to any of the other regulatory agencies.

[535] During that year, several FHLBB officials frequently reviewed newspapers looking for mortgage finance advertisements by savings and loan associations.

[536] Interview with Robert Warwick, Deputy Director, Office of Housing and Urban Affairs, and Francis Passarelli, Assistant Deputy Director, Office of Examination and Supervision, Apr. 4, 1974.

[537] Id.

VI . Sanctions

All four Federal financial regulatory agencies prefer to use informal methods to bring about compliance with laws and regulations to which their regulatees are subject. For example, FHLBB regional offices send letters[538] to errant institutions and to the Board's central office if unsound patterns are discovered by examiners. Similarly, the Federal Reserve System uses what it calls "moral suasion"--for example, writing letters to urge banks to correct unsatisfactory conditions or practices and holding meetings with the bank's management. If necessary, the FRS will contact the appropriate regional Reserve Bank to urge it to put pressure on the bank in question. According to FRS, this method usually proves successful.[539]

If voluntary efforts fail, the agencies may invoke more drastic measures such as cease and desist orders, termination of a charter or insurance, removal of directors or officers, or suspension from the use of credit facilities,[540] but these stringent methods are rarely used. For example, the Federal Home Loan Bank Board has never terminated a charter.[541] Since no fair housing violations have been uncovered by any of the regulatory agencies, these sanctions have never been used against regulated institutions which fail to comply with Title VIII.[542]

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[538] These letters are referred to by FHLBB as "comment letters."

[539] Ryan interview, supra note 436.

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[540] For example, the National Housing Act provides the FSLIC with the authority to issue cease and desist orders to FSLIC-insured institutions, and the FHLBB has similar cease and desist authority with respect to Federal savings and loan associations under section 5(d) of the Home Owner's Loan Act of 1933. Section 5(d) also empowers the FHLBB to appoint a conservator or receiver for a Federal savings and loan association upon the ground, among other things, of willful violation of a cease and desist order which has become final. The FDIC is authorized by Section 8(a) of the Federal Deposit Insurance Act to terminate the deposit insurance of insured banks which are in violation of applicable laws. The Financial Institution Advisory Act of 1966 (12 U.S.C. § 1464(d) (1970)) empowers the Federal Reserve System to issue cease and desist orders.

[541] Warwick and Passarelli interview, supra note 536. In 1972 the Federal Deposit Insurance Corporation issued cease and desist orders to 10 banks. As of December 31 of that year the cease and desist orders outstanding numbered 13. Cease and desist orders were discontinued against two banks. Formal written agreements outstanding December 31, 1972, numbered three. During that same year, five new termination of deposit insurance proceedings were initiated. Action was discontinued against one bank when it took the necessary corrective action. At the end of 1972, action against the remaining four banks awaited either the completion of the corrective period and subsequent re-examination, or the analysis of the examination report. Most of these proceedings were initiated against banks which had engaged in risky financial transactions.

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[542] The Federal Home Loan Bank Board's regulation has been criticized by the Center for National Policy Review for its lack of emphasis on providing for the use of the sanction of termination of a member institution's charter as a penalty for violation of the Board's fair housing regulation. According to FHLBB officials, these cease and desist orders can also be used as sanctions against associations in violation of Title VIII of the Civil Rights Act of 1968, although the Board's regulations concerning Title VIII fail to mention the use of available sanctions. Telephone interview with Rebecca Laird, Attorney, Office of General Counsel, Federal Home Loan Bank Board, Mar. 8, 1974. In a recent letter to this Commission FHLBB wrote that it:

> does not repeat the sanctions available to it to enforce its regulations in each separate regulation, because the same sanctions are available for enforcing all of its regulations. Platt letter, _supra_ note 412.

VII. Social Action Programs

A. The Federal Home Loan Bank Board

During calendar year 1972, the Board began assisting savings and loan associations in several cities[543] to establish neighborhood housing service agencies. This effort is modeled after the Neighborhood Housing Service (NHS) program begun in Pittsburgh, Pennsylvania, in 1968. The Pittsburgh program was designed to arrest the decline of urban neighborhoods which were in basically good condition but which showed signs of deterioration. It is not a program to rehabilitate hardcore ghettos.

Three groups are involved in the program: (1) financial institutions, principally savings and loan associations; (2) community residents of the particular neighborhood; and (3) the local government. The FHLBB's role is primarily to help set up the plan rather than to see that it is implemented. FHLBB reports that it uses its position to convene lenders and to encourage their participation in a program which makes loans in areas which are not usually considered to qualify by ordinary standards.[544]

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[543] Programs have been initiated in Oakland, Cal., Cincinnati, Ohio, Dallas, Tex., and Washington, D.C. They have been planned for Plainfield, N.J., Boston, Mass., and Jamaica, N.Y. Telephone interview with Elizabeth Burnett, Support Staff, Office of Housing and Urban Affairs, FHLBB, Apr. 26, 1974.

[544] Warwick interview, supra note 438.

In order that this program not be misconstrued as redlining by various community groups, the FHLBB has urged savings and loan institutions under its regulation to keep up their usual loan-making level in other areas as well, rather than let their participation in the program serve as their sole effort to lend in a declining area. They are told to "supplement" usual loan-making by the program rather than "supplant" it.[545]

In addition to participating in the NHS program, the FHLBB has implemented a program of assistance to minority-owned or minority-controlled savings and loan associations. The Board offers on-the-job training and technical assistance for employees of these associations.

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[545] Id. Under the NHS program, a homeowner who is interested in rehabilitating her or his home receives an analysis of the need of rehabiliation and financing. Those homeowners whom the NHS staff feel would qualify for a conventional or FHA loan are referred to a participating financial institution. Those who do not qualify are considered by the NHS loan committee, which is controlled by community persons but which also has lender representation, for loans from the high-risk revolving loan fund, which is financed by large private donors. The repayment terms are designed to fit the borrower's ability to pay, including extending the term of the loan, reducing its interest rate, or dropping the interest rate to zero. The program does not preclude new buying in the particular neighborhood. However, loans made to new home buyers are ordinarily set at standards involving the usual level of risk. The number of default experiences the program had encountered were reported to be encouragingly low. Id.

B. Federal Reserve System

Although the System has no social action program of its own, it realizes that it is important that its bank examiners do not inhibit banks from making loans which are substandard in quality under their own social action programs.[546] Therefore, it makes exception to its financial soundness requirement and endorses the extension of credit for the purpose of providing funds to minority-owned or small businesses, the financing of low-income housing, and the funding of enterprises whose objectives and purposes are of a civic or community nature. It has urged its examiners to report separately all marginal loans under a particular bank's social action program. The examiners were informed of the Federal Reserve Board's view that a bank which has a stated policy of making social action loans should not have that program criticized if its overall financial condition permits the taking of higher than normal level risk.

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546. The FRS does not collect information on which State member banks have such programs. Telephone interview with John E. Ryan, Supervisory Bank Examiner, FRS, Apr. 26, 1974.

C. Federal Deposit Insurance Corporation

On August 11, 1972, FDIC put into effect the Leeway Investment Program, which was designed to encourage banks under the Corporation's supervision to invest in organizations engaged in socially-oriented programs. To be eligible for support under the Leeway Investment Program, an organization must have socially desirable goals which are community oriented. For example, an organization engaged in minority business enterprises or in financing low-income housing might be assisted under the program. FDIC permits the institutions it supervises to take greater than normal investment risks in their assistance to such organizations.

The Corporation does not have any statistics available as to how many banks are making this kind of investment. It also does not have any information on the type of investments being made or their results. Thus, it has no mechanism to evaluate the Leeway Program.

D. Office of the Comptroller of the Currency

COC is the only Federal financial regulatory agency which, by law, is instructed to allow national banks to invest in community funds ~~or~~ such charitable or philanthropic organizations as are judged to be in the bank's interest.[547] COC has issued interpretive rulings on this law which prescribe that the following conditions must be met for making such investments: (a) the project must be of a predominantly civic, community, or public nature and not merely private or entrepreneurial;[548] and (b) the bank's investment in any one project does not exceed 2 percent of its capital and surplus and its aggregate investment in any one project does not exceed 5 percent of its capital and surplus.

The rulings also state that such investments may be charged off on taxes as a contribution if they are not paid back.[549] If the bank wishes to require repayment and thereby carry the investment as an asset, the examiners are instructed to treat it as permissible even though it may be a high-risk loan.

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547. 12 U.S.C. § 24 (1970).

548. Thus, an organization engaged in producing low-income housing might qualify.

549. Department of the Treasury, Office of the Comptroller of the Currency, Comptroller's Manual for National Banks, Interpretive Rulings, 87.7480 "Investments in Community Development Projects" 3-33 (undated).

VIII. Organization and Staffing

In order for the Federal financial regulatory agencies to have an adequate fair housing program, each agency would need a full-time fair housing director assisted by at least two professionals. This staff would write guidelines for regulated institutions, develop a fair housing manual and training program for examiners, review selected examination reports with respect to fair housing, participate in the examination of selected banks and savings and loan associations, and review complaint investigations made by their agencies, including their regional offices.[550] They would also review a sample of affirmative fair housing programs maintained by the regulated institutions.[551] Moreover, for the regulatory agencies to operate successful fair housing units, the directors would need a policymaking role within the respective agencies. It is thus imperative that the director report directly to the agency head and have rank equal to the general counsel.

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550. In the case of the Federal Home Loan Bank Board and the Federal Reserve System, this staff would also review on a sample basis any complaints received by the Federal Home Loan Banks and the Federal Reserve Banks, respectively.

551. While no requirement currently exists for regulated institutions to have affirmative fair housing programs, there is a great need for such programs. See pp. 150-151 supra.

In addition, certain examiners should be assigned permanent fair housing responsibilities. These examiners would assist in the fair housing training and supervision of other examiners, so that, as a rule, a review of the fair housing policies and practices of each regulated institution could continue to be incorporated in the regular examination.[552] None of the regulatory agencies, however, has an adequate fair housing program.

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[552] In the case of small banks, however, when a fair housing review might add proportionately more time to the time necessary for bank examination, the special fair housing examiners might make the fair housing reviews themselves.

A. Federal Home Loan Bank Board

The Board's civil rights efforts are carried out jointly by the Director of the Office of Housing and Urban Affairs (OHUA), the staff of the Office of Housing and Urban Affairs, the Legislation Division of the Office of the General Counsel, and the Office of Examination and Supervision. The Director of Housing and Urban Affairs, who is also Director of FSLIC, spends approximately 25 percent of his time on civil rights matters. The Deputy Director of OHUA, who is primarily in charge of civil rights matters in that office, spends 75 percent of his time in this regard.[553] In addition, all savings and loan examiners also have fair housing responsibilities in that they are expected to administer the fair housing questionnaire in conjunction with their savings and loan examinations.

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[553] The duties of the Deputy Director include designing and refining FHLBB's policy positions, assessing the feasibility of collecting racial and ethnic data, working on the Board's nondiscrimination guidelines to clarify its regulations in this area, corresponding with complainants, analyzing problems of discrimination in both lending and employment and more specific issues such as redlining, designing programs to assist minority savings and loan associations, and working in conjunction with the Office of General Counsel in developing legal positions. Warwick interview, supra note 438.

B. Federal Reserve System

The Program Director for Banking Structure is the official responsible for overall implementation of Federal Reserve System policy under Title VIII of the Civil Rights Act of 1968. Fair housing, however, is but one of this person's major duties. The Program Director for Banking Structure also holds the position of Deputy Director[554] of the Division of Supervision and Regulation.

Due to this official's busy schedule, many fair housing responsibilities have been unofficially delegated to one of the staff members in the Division of Supervision and Regulation. This person estimates that he spends 15 to 20 percent of his time fulfilling his fair housing role. His duties in this area include teaching in the examiner training school, attending meetings with persons seeking information on the Board's fair housing program,[555] responding to letters from interested organizations, drafting poster requirements for fair lending, and, primarily, working on possible improvements of the Board's fair housing program, which includes obtaining advice from members of FRS staff.[556]

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[554] As Deputy Director, this person has responsibility for such matters as oversight of bank examinations and supervision of foreign banking activities.

[555] The primary responsibility of the Program Director is the approval of applications from banks for changes in their structure, such as mergers between banks or the opening and closing of branch offices.

[556] Ryan interview, supra note 436.

In addition, all examiners are responsible for including the fair housing questionnaire in their bank examinations. A staff attorney in the Board's Office of General Counsel is primarily responsible for providing the legal advice concerning all the Board's proposals to further fair housing objectives.

C. Federal Deposit Insurance Corporation

FDIC regional offices and the Office of Bank Supervision carry out such civil rights responsibilities as the agency presently acknowledges.[557] There are no specific fair housing assignments in any of these offices. Fair housing assignments are made on an _ad hoc_ basis by the Director of the Office of Bank Supervision or by regional directors. Assistance on legal issues such as is needed in drafting fair housing requirements is also _ad hoc_ and is provided by the General Counsel.

D. Office of the Comptroller of the Currency

There are no specific fair housing assignments at COC. Complaints regarding fair housing violations would be handled by the Office of Chief Counsel in the same fashion as any other complaint. The Deputy Chief Counsel estimates that he spends about 10 percent of his time, and that COC as a whole averages about one full-time person, on fair housing duties. Most of that time has been devoted to drafting fair housing requirements.[558]

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[557] Murphy telephone interview, _supra_ note 506.

[558] FDIC responded:

> ...given the volume of complaints received by this Corporation, at this time we find the staffing devoted to civil rights compliance efforts to be adequate. It may well be, however, that expanded staff will be indicated for this purpose in the future. Wedel letter, _supra_ note 397.

Chapter 3

Veterans Administration (VA)

I. Program and Civil Rights Responsibilities

The Loan Guaranty Service (LGS) in the Department of Veterans Benefits administers the programs set up to assist veterans in buying a home. VA assistance is provided through a guaranty or insurance of the veteran's mortgage,[559] or in rural areas where mortgage funds are unavailable, through a direct loan program.[560] The VA program is designed not only to assist the veteran in becoming a homeowner,[561] but to assure that he or she remains one. The VA frequently counsels veterans on the management of their home payments. Further, in the event that a lender moves to foreclose on a veteran's loan, it is not unusual for the VA to intervene and persuade the lender to delay foreclosure.

In carrying out its function to provide housing assistance to veterans, VA engenders benefits for builders, developers, individual home sellers, appraisers, and management and sales real estate brokers.[562] Builders and developers may apply for VA subdivision feasibility letters,[563] which can then be used in obtaining construction financing. In addition, builders and individual sellers may obtain a VA appraisal at a set fee to determine the maximum loan amount that VA will guarantee, an amount VA considers to be the current market value of their houses.[564] Since the Loan Guaranty Service is also responsible for handling the sale of properties acquired by the VA through foreclosure proceedings,[565] it offers this business to private real estate brokers[566] who manage the properties and sell them on the open market.

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[559] Since its inception in 1944 through June 1974, the VA guaranteed 8,817,238 loans totaling approximately $106.4 billion. The number of loan applications received per month varied from region to region. For example, in fiscal year 1974 the Los Angeles, Cal., region received on the average 3,500 applications monthly; San Francisco, Cal. - 1,800; Waco, Tex. - 1,200; Boston, Mass. - 400; Chicago, Ill. - 700; and New Orleans, La. - 500. Attachment to letter from Odell W. Vaughn, Chief Benefits Director, Veterans Administration, to John A. Buggs, Staff Director, U.S. Commission on Civil Rights, Oct. 24, 1974.

[560] Direct loans comprise a very small part of the VA's overall loan program. From 1950 through June 1974, approximately 320,000 direct loans were made. For example, the Waco, Texas, VA regional office makes 8 to 10 such loans monthly; the New Orleans, Louisiana, office makes two to three. California and Nevada have not had the direct loan program since 1969 because of the availability of private lender financing in those States. Id.

[561] VA guaranteed loans can be guaranteed for up to 60 percent of the loan amount or $12,500, whichever is the lesser. Seventy-three percent of all loans guaranteed in fiscal year 1974 were for 100 percent of the loan amount, i.e., no downpayment. Legislation pending in Congress as of October 1974 would increase maximum guaranty to either $15,000 or $17,500. Id.

The VA is charged by law and Executive order[567] to administer its housing programs for veterans without discrimination on the basis of race, color,

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562. The VA deals with approximately 3,000 management brokers, 45,000 sales brokers, and 5,000 fee appraisers annually.

563. Issuance of a subdivision feasibility letter by the VA means that the VA has determined that there is a need for such housing and that construction plans are feasible. In its review, VA examines such matters as the existence of water and sewer facilities. The number of applications made each month for feasibility letters varies from region to region. For example, the Los Angeles Loan Guaranty Office receives an average of 15 applications per month.

564. VA appoints a roster of qualified appraisers and regional loan guaranty offices designate an approved appraiser to make each appraisal for a set fee. Appraisers are paid by the person requesting the appraisal. Vaughn letter, supra note 559.

565. The VA acquired 17,221 properties in fiscal year 1973.

566. VA utilizes the services of real estate brokers on a fee basis to manage VA-acquired properties and identify and oversee necessary repairs. Such management brokers are paid a monthly fee of $10 per assigned property. The acquired properties are offered for sale on the open market. All real estate brokers in the area have an opportunity to show and sell the properties. The real estate broker who submits the purchase offer accepted by VA for a property receives a 5 percent commission. Vaughn letter, supra note 559.

567. Title VIII of the Civil Rights Act of 1968 requires the VA to administer its programs and activities affirmatively to further fair housing. Executive Order 11063, issued in 1962, requires the VA to "take all action necessary and appropriate to prevent discrimination because of race, color, creed, or national origin," in the sale of housing assisted or guaranteed through its programs.

creed, or national origin.[568] In addition, it is responsible for assuring that minority veterans are given an equal opportunity to purchase homes with VA assistance and that all parties concerned with VA housing programs--builders, developers, home sellers, appraisers, and brokers--deal with minority buyers on a nondiscriminatory basis.

Sex Discrimination

The VA stated that it did not, and had not in the past, made a distinction between male and female veterans in its legislation and regulations relating to its housing program.[569] The VA maintained that in

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568. In August 1974, Title VIII of the Civil Rights Act was amended to include the prohibition of discrimination based on sex.

569. Interview with Edward A. Echols, Director, Loan Guaranty Service, and Eleanor Harmon, Leon Cox, and Bruce Smith of his staff, Veterans Administration, June 20, 1973. Where the use of pronouns has been necessary, VA regulations and manuals sometimes use masculine pronouns to include the feminine gender as well. On April 4, 1974, VA issued a regulation stating that any VA publication and any communication, within the agency, to beneficiaries, or to the public, must avoid any appearance of seeming to preclude benefits for female veterans, dependents, or beneficiaries. Use of terms such as "his or her" or "the veteran" was directed to avoid ground for misconceptions which might arise from the term "his," when in fact both sexes are eligible for the benefits under consideration. 39 Fed. Reg. 12248 (Apr. 4, 1974). As of the spring of 1974, the Loan Guaranty Service has been rewriting a portion of its manual (Loan Guaranty Operations for Regional Offices, Guaranteed and Insured Loan Processing Procedures, M 26-1) on veteran eligibility in an attempt to implement this regulation.

the review of applications from veterans for guaranteed loans the same criteria are applied to both males and females. It has never, however, measured the extent to which field stations provide equal treatment of the sexes.

Until July 1973, VA did not require local field stations to include the full amount of the working wife's income[570] when calculating a veteran's capacity to repay a mortgage loan.[571] This practice meant that some field stations ignored the wife's income altogether, and others used the wife's income only to offset regular family expenses such as car or credit payments. The result of this policy was that often veterans, many of whom were minorities, were denied VA assistance in purchasing a home if they were part of a two-income family.

In July 1973, a Department of Veterans Benefits Circular was issued[572] requiring VA field stations to provide for full recognition of the income and expenses of both veteran and spouse in determining the ability to repay a loan obligation. Not only does this policy aid the minority veteran who is a member of a two-income family,[573] but this policy is an especially important step in prohibiting discrimination on the ground of sex, protecting married female veterans and wives of veterans. If the VA is to assure that its new policy regarding spouse's income is being carried out, it will be necessary to measure the number of mortgage loans which were approved on the basis of both the husband's and wife's income. In this regard, VA has begun to collect the necessary data. Nonetheless, as of April 1974, there continued to be a lack of data on spouse income in VA loan programs.[574]

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[570] VA permits veteran's spouses to share in the ownership of homes purchased with loans to veterans which have been guaranteed by the VA. VA stated that:

> It should be understood that the Loan Guaranty program is for the benefit of "veterans", not their spouses, parents, etc. The word "veteran" is defined by law as one who has served a specified period of time on active duty in the armed forces of the United States and who was discharged under conditions other than dishonorable. In recognition of the concept that the family unit is the basis for our society, VA permitted, by VAR 4307, acquisition of a portion of the ownership (title) of the home by the spouse of the veterans. Vaughn letter, *supra* note 559.

[571] From March 1953 until April 1968, VA permitted but did not require a spouse's income to be taken into account in determining whether the veteran could be eligible for a loan when the veteran's income by itself was not sufficient. In March 1953 VA provided for consideration of spouses' income but stated that "No hard and fast rule" could govern such consideration. Each case was to be considered individually by the reviewing official. Veterans Administration, Technical Bulletin 135, March 1953, cited in Vaughn letter, *supra* note 559. In October 1959 VA included take-home income of spouses in a checklist for field office use in analyzing the veteran's ability to repay a mortgage. Veterans Administration, Form 26-6393, Oct. 1959, cited in Vaughn letter, *supra* note 559. To clarify further VA's policy with regard to spouses' income, in April 1968 VA "directed that a wife's income be considered providing her employment was stable and could reasonably be expected to continue in the foreseeable future." Vaughn letter, *supra* note 559.

[572] Department of Veterans Benefits Circular 26-73-24, issued by Donald E. Johnson, Administrator of Veterans Affairs, July 19, 1973.

In any event, the VA needs to extend its policy of nondiscrimination on the basis of sex to protect all women applying for VA-guaranteed loans or purchasing VA-acquired property.[575] For instance, single women frequently encounter difficulties in seeking to obtain mortgages; often different standards are applied to applications of single women than to those of single men, and cosigners are more often required for single women than for single men. Also, many banks simply refuse to make loans to women, considering them to be a poor credit risk.[576] Single female veterans[577] need protection against such discrimination by lenders.

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[573] The relationship between racial-ethnic discrimination and sex discrimination is discussed in Chapter 1, Department of Housing and Urban Development, p. supra.

[574] In an April 1974 interview, VA staff reported that as of fall 1973, data on spouses' income, collected on loan application forms, had been included in VA's reporting system. As of April 1974, the VA had only 6 months of data on spouses' income and stated that it was too early to tell whether field stations were complying with the new requirement to treat the spouses' income equally. The Director of the Loan Guaranty Service personally reviewed a sample of the approved application forms on a regular basis and had not uncovered any instance in which the spouses' income was not considered. Interview with Edward A. Echols, Director, Loan Guaranty Service, and Eleanor Harmon, Special Assistant to the Director, Veterans Administration, Apr. 30, 1974.

[575] Females constitute 1.9 percent of the eligible veteran population. Vaughn letter, supra note 559.

It is too early to assess the extent to which this policy is being adhered to by the regional offices. Unfortunately, the attitude of the VA central office is that it is not important to monitor adequately the actions of the regional offices with regard to sex discrimination. Although there are limitations to the effective monitoring which could be accomplished, given VA's present data collection system,[578] except for the regular evaluation of approved loans and of rejected applications, the VA does not have any special means by which to measure the extent to which field stations provide equal treatment of the sexes.

The VA's policy prohibiting sex discrimination, while praiseworthy, is only a beginning. It applies only to VA's field stations. It has not been imposed by the VA on builders, developers, brokers, lenders, or other participants in VA's programs.[579] Since these participants in VA's programs, rather than the VA field stations themselves, make the majority of decisions to issue loans,[580] this policy probably will not have a far-reaching effect on the elimination of sex discrimination in VA programs.

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[576] Refusal by banks to make loans to women is discussed in Chapter 2, The Federal Financial Regulatory Agencies, Section II B *supra*.

[577] In considering the loan application of an eligible unmarried surviving spouse of a veteran, the widow or widower is classified by law as a veteran and as such is treated the same as any veteran. VA reports that if the veteran's income is determined to be stable, all of it would be taken into account. Vaughn letter, *supra* note 559.

[578] The VA has no way of knowing about the income and sex of prospective applicants who are discouraged from making a written loan application by bank officials or VA personnel.

[579] In defense of its position, VA recently stated that:

> ...until the passage of P.L. 83-383 on August 22, 1974, there was no Federal prohibition against sex discrimination in transactions relating to housing, consequently VA had no statutory mandate nor enforcement authority. It should also be understood that the VA has no authority to force a seller to sell a property to a particular veteran, nor a lender to make a loan to a particular veteran. Vaughn letter, *supra* note 559.

II. Organization and Staffing

The VA central office LGS has a small, but dedicated and diligent, equal opportunity staff which reports directly to the Director of the Loan Guaranty Service. (See organization chart on page 227.) This staff has responsibility for formulating equal opportunity policy.[581] It has recently been increased from two to four full-time professional employees but continues to lack a full-time director with sufficient authority to ensure execution of VA housing procedures.[582]

Responsibility for implementing equal opportunity policy lies with the regular program staff in the Loan Guaranty Divisions of the 50 VA regional

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580. For example, VA has set no requirements or prohibitions on sex discrimination when builders and developers with VA subdivision approval market and finance properties themselves. In the same sense, if a lender does not determine that a potential borrower is creditworthy, the loan application most likely will never reach the VA for approval or disapproval.

581. The areas in which the equal opportunity staff is currently working are: minority entrepreneurship opportunities and counseling programs; racial and ethnic data collection, tabulation, and correlation; and compilation of minority media directories. In addition, the staff has developed a summary of State fair housing laws for use by the field offices.

582. The Director of LGS has overall responsibility for execution of the VA's fair housing program, but because the primary function of this position is the general administration of VA housing programs, the Director continues to devote no more than 10 percent of his time to equal opportunity duties. The Director is responsible for the supervision of the program divisions in the Loan Guaranty Service, as shown in the organization chart on page 227 _infra_.

offices, also referred to as field stations.[583] The location of these divisions is shown on the map on page 228.[584] They administer the loan guaranty and direct loan programs and handle the sale of properties repossessed by the VA through mortgage foreclosure.

Each regional Loan Guaranty Division is headed by a Loan Guaranty Officer (LGO) who is responsible to the Regional Director[585] for the day-to-day activities of the office, including fair housing. As of April 1974, however, there were no full- or even part-time equal opportunity staff in any of these field stations.[586]

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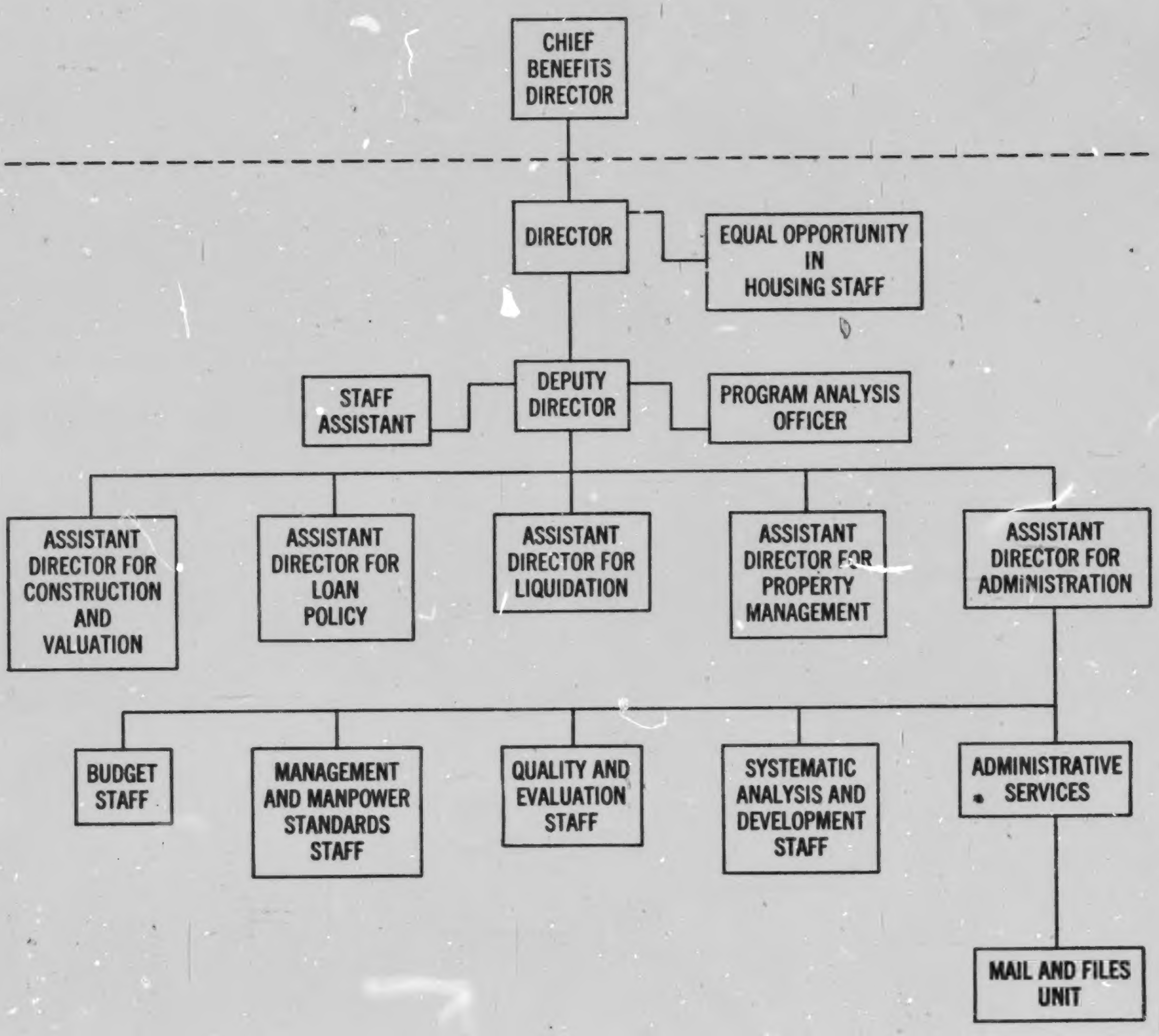
[583] VA field stations are any VA installation located outside the central office. They include regional offices, hospitals, outpatient clinics, and insurance centers.

[584] The Commission's staff visited Loan Guaranty Offices in Waco, Tex.; Los Angeles and San Francisco, Cal.; Denver, Colo.; Boston, Mass.; New Orleans, La.; and Chicago, Ill.

[585] In addition, the Chief Attorney and the heads of the Adjudication Division, the Veterans Assistance Division, the Administrative Division, and the Finance and Data Processing Division all report to the Directors of VA regional offices.

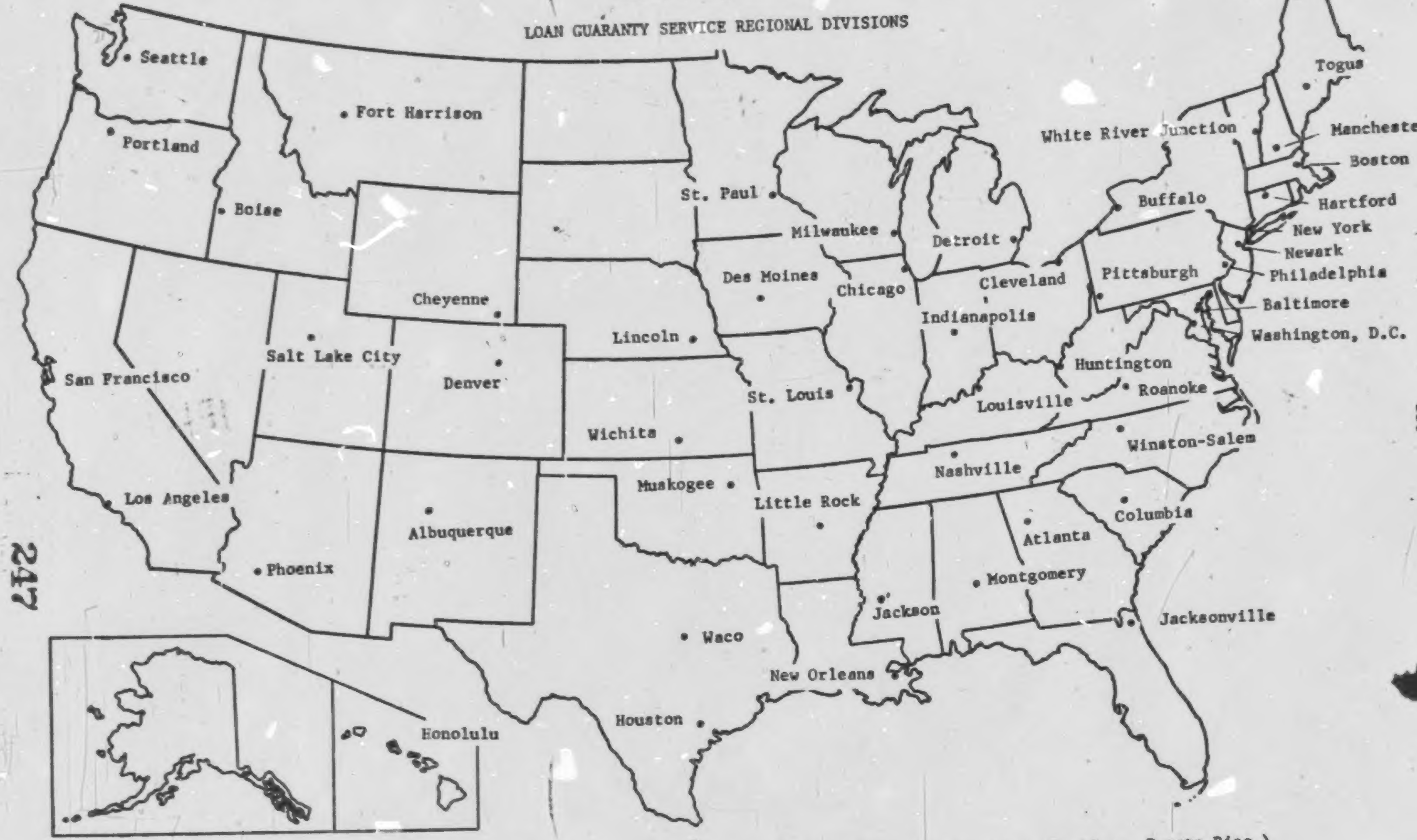
[586] Echols and Harmon interview, supra note 574.

Organization of Loan Guaranty Service in Central Office


CHIEF BENEFITS DIRECTOR
DIRECTOR
EQUAL OPPORTUNITY IN HOUSING STAFF
STAFF ASSISTANT
DEPUTY DIRECTOR
PROGRAM ANALYSIS OFFICER
ASSISTANT DIRECTOR FOR CONSTRUCTION AND VALUATION
ASSISTANT DIRECTOR FOR LOAN POLICY
ASSISTANT DIRECTOR FOR LIQUIDATION
ASSISTANT DIRECTOR FOR PROPERTY MANAGEMENT
ASSISTANT DIRECTOR FOR ADMINISTRATION
BUDGET STAFF
MANAGEMENT AND MANPOWER STANDARDS STAFF
QUALITY AND EVALUATION STAFF
SYSTEMATIC ANALYSIS AND DEVELOPMENT STAFF
ADMINISTRATIVE SERVICES
MAIL AND FILES UNIT

VETERANS ADMINISTRATION

LOAN GUARANTY SERVICE REGIONAL DIVISIONS


Seattle
Portland
Boise
Fort Harrison
San Francisco
Salt Lake City
Cheyenne
Denver
Los Angeles
Phoenix
Albuquerque
St. Paul
Milwaukee
Des Moines
Chicago
Lincoln
Wichita
St. Louis
Muskogee
Little Rock
Waco
Houston
New Orleans
Jackson
Detroit
Cleveland
Indianapolis
Louisville
Nashville
Montgomery
Atlanta
Columbia
Jacksonville
Winston-Salem
Roanoke
Huntington
Pittsburgh
Buffalo
White River Junction
Togus
Manchester
Boston
Hartford
New York
Newark
Philadelphia
Baltimore
Washington, D.C.
Honolulu

(A Regional Office is located in San Juan, Puerto Rico.)

The VA central office claims that there are many positions in the field stations which have significant equal opportunity components.[587] This assertion, however, is overstated. In fact, the field staff do not appear to feel a unique responsibility for the equal opportunity stance of the VA. For example, the Office of the VA Administrator conducted a survey in the spring of 1973 of loan guaranty staff and field directors to determine those duties which could be eliminated without detriment to the loan guaranty program. It appears that the LGO's responded that they would recommend reducing the equal housing opportunity reporting requirements,[588] which are among the principal equal opportunity duties of these staff.

Program staff in Washington also have equal opportunity responsibilities. For example, the Quality and Evaluation Division[589] of the Loan Guaranty Service incorporates a review of each field station's execution of fair housing responsibilities in the review of that station which is scheduled every 18 months. It does not, however, conduct reviews devoted exclusively to civil rights operations.[590]

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[587] Response to the Commission's April 1973 questionnaire [hereinafter referred to as VA response] contained in a letter from Donald E. Johnson, Administrator of Veterans Affairs, Veterans Administration, to Stephen Horn, Vice Chairman, United States Commission on Civil Rights, June 8, 1973. These positions include, for example, regional staff responsible for handling nondiscrimination certifications and for processing discrimination complaints.

[588] In August 1973, Commission staff asked the Director of the Loan Guaranty Service for a summary of the recommendations made by the loan guaranty staff and field directors in this survey. Letter from Jeffrey M. Miller, Director, Office of Federal Civil Rights Evaluation, U.S. Commission on Civil Rights, to Edward A. Echols, Director, Loan Guaranty Service, Veterans Administration, Aug. 1, 1973. The Director of the Loan Guaranty Service did not indicate what recommendations were made but stated that although 15 of the 60 recommendations were accepted or approved, none of the recommendations accepted had any "substantive impact on equal housing opportunity." Letter from Edward A. Echols, Director, Loan Guaranty Service, Veterans Administration, to Jeffrey M. Miller, Director, Office of Federal Civil Rights Evaluation, U.S. Commission on Civil Rights, Sept. 7, 1973. In describing the identification of nonproductive work made by this survey, VA later stated that recommendations were made which "related to the frequency of field station reports on several aspects of our equal housing opportunity program." Vaughn letter, *supra* note 559.

[589] This staff consists of six white male professionals.

While the VA Loan Guaranty Service depends almost entirely on program personnel, both in the central office and in the field, to carry out its equal opportunity responsibilities, as of April 1974 no specific equal opportunity training had ever been given on a formal basis to any of the program staff.[591] This lack of training was clearly reflected in Commission interviews with VA field station personnel who were often unfamiliar with the proper procedures for processing discrimination complaints,[592] who frequently had no idea how to utilize racial program data,[593] and who generally had designed no plans for monitoring the equal opportunity requirements.

A further deficiency is that the loan guaranty divisions of the regional offices continue to lack minority staff,[594] who would be sensitive to the nuances of housing discrimination which they are required to prevent. For example, in fiscal year 1973 the Waco Loan Guaranty Office, with a total staff of 96, employed three persons of Spanish speaking background, of whom two were professionals, one full-time and one part-time, and two blacks, neither of whom were in professional positions.[595] The New Orleans Loan Guaranty Office, with a total of 50 employees, had only two minority employees, both black, and only one of whom was a professional.[596] The Boston office had 33 employees, only one of whom was a black[597] and was in a professional position.

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[590] The evaluation staff are not accompanied by a member of the Director's equal opportunity staff when they make the field office visits. The evaluation staff does, however, consult with equal opportunity staff regarding possible problems which may exist at a field station, but such consultations are carried out on an ad hoc and informal basis.

[591] Echols and Harmon interview, supra note 574.

[592] The processing of discrimination complaints is discussed further in Section III B infra.

[593] Racial-ethnic and sex data collection are discussed further in Section III C infra.

[594] VA staff stated that, as of October 1974, no data had been collected regarding female staff, as to either the proportion of women in all grade levels or the numbers of women in upper level positions. Telephone interview with Bruce Smith, Equal Opportunity Specialist, Loan Guaranty Service, Veterans Administration, Oct. 1, 1974.

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595. As of the 1970 census the Waco Standard Metropolitan Statistical Area (SMSA) had a total population of 147,533. There were 9,900 persons of Spanish speaking background (6.7 percent) and 23,799 blacks (16.1 percent) in the SMSA.

596. As of the 1970 census, the New Orleans SMSA had a total population of 1,045,089, including 37,284 persons of Spanish speaking background (3.6 percent) and 323,776 blacks (31.0 percent).

597. As of the 1970 census, the Boston SMSA had a total population of 2,753,750, including 35,063 persons of Spanish speaking background (1.3 percent) and 127,035 blacks (4.6 percent).

III. Fair Housing Enforcement Mechanisms

A. Certification

VA's certification requirements are one of its principal tools for ensuring nondiscrimination.[598] Prior to 1972, a certification of nondiscrimination[599] was required from builders and developers requesting subdivision approval and appraisals, from brokers participating in the VA-acquired property program, from veterans purchasing housing under VA programs, and from purchasers of VA-acquired properties.[600]

In 1972, VA eliminated the certification required of builders prior to giving appraisals of new housing and substituted a notice informing the applicant of the nondiscrimination requirements under law and Executive order. In the same year, VA's certification requirements were extended to appraisers, who are now required to certify that their estimates of reasonable value[601] have not been influenced by the race, religion, or national origin of persons residing on the property or in the neighborhood.

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598. The other is that of complaint processing. See Section III B *infra*.

599. A certification is a written promise that the signer will not discriminate in the sale of housing covered by the certification. Any violation of the certifications, that is, proof that the signer did indeed discriminate in the sale of the housing, could result in the imposition of sanctions by the VA, including refusal to appraise future properties.

600. Veterans and purchasers of VA-acquired properties are required to certify that they will not discriminate in the resale of the properties they purchase.

601. The certificate of reasonable value is a formal statement of the value of a property, based on a VA appraisal report.

All lenders in the loan guaranty program are on continuing notice via the Lender's Handbook that, should they discriminate on the basis of race, color, religion or national origin, they may be suspended from further participation in the VA program.[602] Nonetheless, there exists increasing evidence of discrimination in mortgage financing,[603] and as of April 1974, the VA still did not require an assurance of nondiscrimination from the lenders with which it deals.[604] Unless VA uses its leverage and refuses to take its business to banks which do not have affirmative lending procedures, it will continue to be a passive party to discrimination in mortgage lending.

The most serious deficiency in VA's compliance program is its failure to monitor the certifications it requires. As of April 1974, the central office had not compelled such monitoring, and none of the field stations visited had taken it upon themselves to determine if VA's nondiscrimination requirements were being followed.

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[602] Vaughn letter, *supra* note 559.

[603] See U.S. Commission on Civil Rights, *Mortgage Money: Who Gets It?, A Case Study in Mortgage Lending Discrimination in Hartford, Connecticut*, June 1974. This problem is also discussed by D.A. Searing in "Discrimination in Home Finance," 48 *Notre Dame Law* 1113 (1973). See also: Statement of William L. Taylor, Director, Center for National Policy Review, Catholic University, Washington, D.C. on Discrimination in Mortgage Finance before Congressional Black Caucus Hearings on Government Lawlessness, June 26, 1972; Helena Richardson, *Consultant Report: Discrimination in Housing, Inc.*, December 1971; *Survey on Racial Discrimination in Mortgage Financing of Minority Real Estate Brokers in the United States*, a survey performed by the National Association of Real Estate Brokers under a contract with the U.S. Department of Housing and Urban Development, May 1971. *Competition in Real Estate and Mortgage Lending, Hearings Before the Subcomm. on Antitrust and Monopoly of the Senate Comm. on the Judiciary*, 92d Cong., 2d Sess., (hearings held in Boston, Mass., Sept. 13-15, 1971).

[604] Echols and Harmon interview, *supra* note 574.

The rationale for failure to monitor certification requirements varies from field station to field station. For example, in Chicago,[605] Waco,[606] and New Orleans[607] the LGO's relied on the absence of complaints as an indication of compliance.[608] The San Francisco[609] field station maintained that no monitoring of certifications was done because of the large number of certifications that it received. The Boston[610] LGO supported his inaction by the absence of central office requirements.

Nonetheless, the responsibility for administering certification requirements of necessity entails followup to ensure compliance. Therefore, the field stations cannot be exonerated for their lack of monitoring by the absence of a Washington directive.[611] As of April 1974, the LGS was planning a demonstration project to monitor the activities of sellers and brokers in selected locations. LGS staff hope that this

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605. Interview with Harry Leth, Loan Guaranty Officer, VA Regional Office, Chicago, Ill., in Chicago, May 14, 1973.

606. Interview with William Miller, Loan Guaranty Officer, VA Regional Office, Waco, Tex., in Waco, Jan. 31, 1973.

607. Interview with Paul Griener, Loan Guaranty Officer, VA Regional Office, New Orleans, La., in New Orleans, Feb. 6, 1973.

608. See note 624 infra, for a discussion concerning the unreliability of using the absence of complaints as an index of nondiscrimination.

609. Interview with Norton W. Beachel, Loan Guaranty Officer, VA Regional Office, San Francisco, Cal., in San Francisco, March 20, 1973.

610. Interview with J.A. Miller, Loan Guaranty Officer, VA Regional Office, Boston, Mass., in Boston, Oct. 26, 1973.

611. Such a directive, however, would be beneficial by indicating that the central office places great importance on this activity. It could also be used to standardize the types of reviews which field stations would conduct.

demonstration project will be in operation by the end of fiscal year 1974.[612] If it is successful, the LGS proposed to install a monitoring program across the Nation during fiscal year 1975. The Loan Guaranty Service has received the necessary approval from the region to install this demonstration project, but it has not received VA approval for the funding.[613]

Joint HUD-VA Nondiscrimination Certificates

In March 1973, in conjunction with the Department of Housing and Urban Development (HUD),[614] broker certifications were expanded from a simple assurance of nondiscrimination, so that any broker participating in the sale or management of HUD- or VA-owned properties must promise that neither they nor anyone authorized to act for them will act in

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[612] Echols and Harmon interview, supra note 574.

[613] Id. As a result, the staff could not provide more details on where or how the demonstration project will be effected.

[614] The VA made the decision to require affirmative marketing by brokers in conjunction with HUD. The two agencies believe they ought to follow nearly identical procedures in handling their acquired properties. Also, since they deal, in many instances, with the same brokers, it would be most effective if the two agencies adopted the new requirement at the same time.

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violation of the fair housing provision of the Civil Rights Act of 1968 or Executive Order 11063. The brokers must further agree that their staffs will be instructed in policies of nondiscrimination, that the fair housing poster[615] will be prominently displayed and the equal housing opportunity logotype[616] will be used in all advertising, that minority media will be utilized when advertising the sale of any properties, and that a nondiscriminatory hiring policy will be maintained. Finally, the brokers agree that noncompliance by them or their organizations will be proper basis for barring them from VA and HUD programs.

VA and HUD sent separate letters to brokers to implement this joint agreement. On June 1, 1973, the VA field stations sent letters to all management and sales brokers on their rosters informing the brokers that they are now required to carry out these affirmative fair housing marketing practices for all their listings, including new VA listings. The brokers were instructed to sign certification forms and return them to the VA field stations by July 2, 1973, or their names would be removed from the VA roster and they would no longer be eligible to manage or sell VA-owned properties.[617] This step is by far the most positive action the VA has taken to fulfill its obligation to administer its programs so as to further the purposes of the Fair Housing Act.

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[615] The new VA fair housing posters, which are printed in both Spanish and English, are similar to the HUD fair housing posters, and publicize the prohibitions of Title VIII.

[616] The equal housing opportunity logotype is an often used trademark symbolizing nondiscriminatory housing practices by the displayer thereof. It is reproduced in Chapter 1, Department of Housing and Urban Development, p. 82 supra.

VA instructions clearly state that these certification requirements apply to all listings of a broker, not just VA- or HUD-owned property.[618] Thus the VA has broadly acknowledged its Title VIII responsibility to administer its programs and activities relating to housing affirmatively to further fair housing throughout the United States. HUD, on the other hand, has interpreted its responsibilities more narrowly and issued instructions referring only to HUD-owned properties.

HUD had preceded the VA in its announcement of the new policy and made the requirement of the Federal Housing Administration (FHA)-acquired

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617. In contrast, HUD indicated that it will only remove from its roster all brokers who refuse to sign the certification. It has not made provision for refusing all sales offers from such brokers. Echols letter, supra note 588.

618. Letter from VA Loan Guaranty Officers to management and sales brokers, June 1, 1973.

619. The Federal Housing Administration's unsubsidized housing programs are similar to those of VA. It, too, provides mortgage insurance and disposes of properties acquired through foreclosures. FHA was created as an indepedent agency in 1934 to stimulate the private housing and the home finance market through the insurance of mortgages made by private lenders. In 1970, FHA was made a constituent agency of the Department of Housing and Urban Development.

properties program effective as of April 1973. However, when the VA instituted the requirement in June 1973, its staff were dismayed to learn that in many localities the announced new HUD requirement had never been implemented. Instead of contacting brokers who had already adjusted to an affirmative marketing requirement imposed by HUD, VA found itself on the front lines confronting the brokers with a unique and stringent requirement for the first time. To compound VA's problems, field offices began reporting that only a small percentage of brokers were signing and returning the new certifications.[620]

Although this new certification could be of far-reaching consequence, VA has failed to ensure that all of its participating management and sales brokers sign the certification requirements. As of April 1974, VA continued to allow brokers who had not signed certifications to sell VA-owned properties. In fact, VA stated that:

> Until the HUD program is fully and uniformly implemented, and the operating procedures of the two agencies are balanced, VA has not and will not take any sanctions against brokers.[621]

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[620] The percentage of management and sales brokers who returned the joint HUD-VA nondiscrimination certificates to VA varied from a high of 52 percent for the Denver, Colo., region to a low of 32 percent for the Chicago, Ill. region. The remaining eight regions had the following percentages: Seattle, Wash.--48 percent; Dallas, Tex.--45 percent; Kansas City, Kan.--40 percent; New York, N.Y.--37 percent; San Francisco, Cal. --36 percent; Atlanta, Ga.--36 percent; Boston, Mass.--35 percent; and Philadelphia, Pa.--34 percent. The VA reported these data by HUD regions, the standard Federal regions (see map on page 22) because they concern the joint HUD-VA agreement.

[621] Echols letter, supra note 588.

Clearly, the promise of this new certification requirement has not been filled. For VA to delay its actions until full and uniform implementation of the program by HUD may be tantamount to permanently abandoning this new requirement.

B. Complaints

The VA has a responsiblity to investigate discrimination complaints under its own programs. This includes complaints not only from veterans attempting to purchase housing or secure mortgage financing but also from any person who believes he or she has been discriminated against by a builder, developer, individual seller, appraiser, management and sales real estate broker, or lender benefiting from a VA program.

As of mid-1973, VA continued to rely heavily on the complaints it received as a gauge for measuring nondiscrimination in its programs. Since the Loan Guaranty Service received only 14 complaints of discrimination during fiscal year 1973,[622] it suggested that this small number of complaints may be due to a lack of discrimination under its programs.[623]

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[622] Most VA field stations have not received complaints of discrimination in recent years and, in fact, many LGO's do not recall that any such complaints were ever received, as, for example, in the Waco, Tex., and New Orleans, La., field stations. William Miller interview, supra note 606 and Griener interview, supra note 607.

[623] Echols interview, supra note 569, William Miller interview, supra note 606 and Griener interview, supra note 607.

This assertion is unfounded. There is widespread agreement that few victims of discrimination ever file complaints.[624] The number of complaints received does not often bear any relationship to discrimination that may be occurring. Therefore, the processing of complaints is not an adequate enforcement mechanism to be substituted for conducting civil rights reviews of the activities of builders, developers, lenders, appraisers, and brokers.

One reason the VA receives so few complaints is because of the relative anonymity of its fair housing effort. The regional Loan Guaranty Offices visited by Commission staff have made little effort to publicize that the complaints filed will be investigated and resolved. Until 1973, VA relied entirely on the existence of general pamphlets describing its housing benefits to inform minority veterans of their right to complain of discrimination while attempting to utilize VA housing assistance. However, since the fall of 1973 field stations have also been displaying the VA fair housing poster which informs persons of their right to complain to

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624. Procedures for processing complaints may be lengthy, inadequate, or even nonexistent. Hence, grievances about the operation of a program may never be translated into formal complaints which are seen by Federal program officials. Victims of discrimination may choose not to file a complaint because of reluctance to become involved in the complaint process or because of skepticism about the outcome. In the absence of knowledge about available benefits and in the absence of knowledge of their own eligibility for them, many potential beneficiaries may not even realize that discrimination has occurred. For a further discussion of this point, see U.S. Commission on Civil Rights, To Know or Not to Know: Collection and Use of Racial and Ethnic Data in Federal Assistance Programs (1973).

VA field stations in the event of housing discrimination in a VA program.[625]

The service which the VA provides in investigating and resolving complaints is so little known that it is entirely possible that a complainant might direct his or her grievance to HUD rather than VA.[626] The VA, however, has greater leverage for resolving discrimination complaints in its own programs than does HUD under Title VIII of the Civil Rights Act of 1968. When, as a result of a complaint of discrimination in housing or mortgage finance against a participant in a VA program, it has been determined that discrimination has occurred, VA has a fair record of providing relief for the complainant.[627] Further, if the VA finds discrimination in the handling of its acquired property, or in the sale of housing in a VA-approved subdivision, Executive Order 11063 provides VA with the authority to terminate the offending builder or broker's participation in VA programs. If HUD receives an identical complaint regarding a VA subdivision or acquired property, Title VIII of the Civil Rights Act of 1968 only gives HUD authority to investigate and conciliate the complaint.[628] HUD has no sanctions to apply in the event of an unsuccessful conciliation.[629]

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[625] ~~The~~ posters (see note 615 supra) also indicate that complaints of any other housing discrimination should be directed to HUD.

[626] Under Title VIII, HUD has general responsibility for investigating complaints of discrimination in housing on the grounds of race, color, and national origin. In 1971, HUD began a mass media fair housing advertising campaign announcing this function. The campaign created a large increase in the number of complaints received by the Department.

[627] For example, the Los Angeles VA field office has received 3 compliants of discrimination since 1962. All three complaints came from black veterans and were investigated by the field office. In two cases, through conciliation, the VA was able to persuade the respondents to sell the houses in question to the complainants. (In the third case the VA stated that it found no discrimination, since the complainant did not have the income necessary for the monthly mortgage payments.) Interview with Gene Y. Jarnagin, Loan Guaranty Officer, VA Regional Office, Los Angeles, Cal., in Los Angeles, Mar. 26, 1973.

Consequently, it is important that HUD and VA arrange to handle such discrimination complaints jointly so that all available Federal leverage can be applied to prevent housing discrimination under government programs. As of April 1974, VA has had little coordination with HUD on complaint handling, and there was no written agreement concerning interagency complaint coordination.[630]

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[628] HUD does have the authority to terminate offending participants in its own program under both Executive Order 11063 and Title VI of the Civil Rights Act of 1964.

[629] In the event of an unsuccessful conciliation, HUD can refer the case to the Department of Justice for prosecution.

[630] VA staff state that if HUD gets a complaint which obviously involves a VA program, it will send that complaint to VA; for example, if the complainant had received a VA loan. In some cases, however, it is not evident whether a VA program is involved. In this case, HUD may do research to ascertain whether or not a VA loan has been made and, if so, the complaint would then be sent to VA. VA staff stated that they would not get complaints concerning VA-approved subdivisions unless the VA approval of the subdivision was mentioned in the complaint. If, however, a complaint unrelated to fair housing concerned technical aspects of VA's approval of the subdivision, such as the water-sewer facilities of the subdivision, HUD would send this type of complaint to the VA. VA staff stated that they were satisfied that HUD was appropriately sending complaints to VA. Echols and Harmon interview, supra note 574.

If the VA takes the appropriate steps to publicize its complaint-handling responsibilities and to become informed of complaints filed with HUD against its program participants, it must also take steps to improve its procedures for complaint investigation and resolution. In fiscal year 1973, VA field offices generally were found to be unaware of VA instructions on how to handle discrimination complaints which come directly to their offices.

According to the central office, VA field offices are to handle discrimination complaints in accordance with a circular dated February 1968 (DVB Circular 26-68-7). This circular, prepared before there were any full-time equal opportunity staff in the central office, requires field offices to forward copies of complaints to the Assistant Director for Loan Policy,[631] followed by an interim report in 30 days and finally by a report of the closed case.[632]

Each field office visited, however, handled complaint processing and investigation in a different manner. The Loan Guaranty Officer in Boston stated that he used a 1962 directive in processing discrimination complaints.[633]

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[631] See organization chart on p. 227 supra. The Assistant Director of Loan Policy heads the Loan Policy Division which sets credit standards.

[632] The implementing procedures to be followed by the field office in investigating and conciliating complaints of discrimination were first outlined by VA in March 1963. Veterans Administration, Interim Issue 26-63-4, Mar. 8, 1963. These procedures were incorporated into VA's Manual in November 1965. The procedures listed in the Manual were amended in 1968. Veterans Administration, DVB Circular 26-68-7, Feb. 2, 1968. The procedures are outdated as they make no reference to the present full-time equal opportunity staff employed in the VA central office.

[633] J.A. Miller interview, supra note 610.

This directive, in fact, does not deal with complaint investigations, but rather with unfair contractual and marketing practices. In Denver, the LGO used still another procedure for handling complaints, appointing a committee from his staff to investigate and resolve them. He cited a 1955 processing manual, updated in 1965, for his instructions.[634] In neither the Waco nor the New Orleans office could the LGO's specifically describe VA regulations for handling complaint investigations and resolutions.[635] The New Orleans LGO believed that he would be personally responsible for investigating and resolving complaints, but since he had never handled one, he was not aware of the existence of formal procedures.[636]

C. Racial and Ethnic Data Collection

The VA has been keeping racial and ethnic data in its acquired property program since the fall of 1968.[637] These include data on the property locations and the race and ethnic origin of purchasers. The data reveal that while minority sales participation is generally high, it is often on a segregated basis.[638] For example, 64 percent of white purchasers but only 5 percent of black purchasers bought homes in white neighborhoods during calendar year 1972. And nearly 43 percent of all black buyers purchased homes in all-minority neighborhoods.[639] Although 72.4 percent of persons of Spanish speaking background purchased houses in integrated neighborhoods, only 17.5 percent purchased homes in white neighborhoods.[640]

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[634] Interview with Rex Johnson, Loan Guaranty Officer, VA Regional Office, Denver, Col., in Denver, Oct. 26, 1972.

[635] William Miller interview, supra note 606, and Griener interview, supra note 607.

[636] Griener interview, supra note 607.

[637] Data are maintained separately for the following categories: White, Negro, Spanish American, Oriental, American Indian, and Other.

The VA indicates that the reason for these segregated buying patterns is the difficulty in getting minority families, "particularly Negroes,"[641] to reside in white neighborhoods. This argument is singularly unconvincing. Until real estate brokers throughout the country practice affirmative marketing of all property they list, little progress can be made in ending residential segregation. As of April 1974, VA had not enforced its broker nondiscrimination requirements or periodically reviewed the practices of the brokers selling its acquired properties to [illegible]sure that the brokers' operations further the purposes of Title VIII.[642]

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[638] A comparision of VA's figures for calendar year 1972 and 1970 census data show that 28.9 percent of the accepted offers were from blacks, who comprise 11.1 percent of the population; and 6.7 percent of the offers were from persons of Spanish origin, who comprise 4.5 percent of the population. On the other hand, only 0.2 percent of the offers were from Native Americans, who comprise 0.4 percent of the population, and only 0.2 percent of the offers were from Asian Americans, who comprise 0.7 percent of the population.

[639] VA response, supra note 587. Asian Americans and the reminder of black purchasers bought homes in integrated neighborhoods. An integrated neighborhood is defined by VA as "a street between intersections where the occupants on both sides of the street include whites and one or more minority families." VA response to Commission's July 1972 questionnaire, July 28, 1972.

[640] VA response, supra note 587. The remainder of persons of Spanish speaking background purchased homes in neighborhoods with no white residents.

[641] Id.

In 1971, VA began collecting data on the race and ethnic origin of applicants for guaranteed and direct loans.[643] In 1973 VA also began to collect property location data for these loans; data to reveal whether veterans are purchasing homes with VA assistance on a segregated or integrated basis.

In 1974, the VA central office expanded its data system so that the VA would be able to identify monthly trends in minority participation in VA's acquired property, loan guaranty, and direct loan programs. This system will enable VA to correlate race and ethnic characteristics with such other factors as downpayment size, time lapse between application and loan approval, and discrepancies in prices paid by minority and white nonminority buyers. Moreover, it will include racial and ethnic data not only on participants but also on applicants and/or persons eligible to participate in these programs. Thus, the VA will be able to determine the relative rates of participation in its programs by various racial and ethnic groups. Such a system, when fully implemented, will represent a significant improvement in VA's use of the data it collects. As of April 1974, the system was in partial operation and the target date for full operation was July 1974.[644] At that time, also, the first usable results from the improved data system will be available.

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[642] Echols and Harmon interview, supra note 574.

[643] During the first half of fiscal year 1972, 99 percent of all applications for VA home loan guaranties reported the race or ethnic origin of the applicant. Reporting by field stations on direct loans, however, apparently has been incomplete; VA reported in October 1974 that "an effort to eliminate incomplete reporting on race and ethnicity of veteran buyers led to the issuance of DVB Circular 26-74-9 directing field stations to collect /racial and ethnic/ data on all direct loans." Vaughn letter, supra note 559.

There are, however, some weaknesses remaining in VA's collection of data on its loan programs. One is that VA does not plan to cross-tabulate its racial and ethnic data by sex.[645] Given the importance of sex discrimination and its inclusion in much recent legislation and proposed legislation, including discrimination in credit and mortgage financing, computing data by sex is becoming increasingly more crucial. However, computing sex data separately from racial and ethnic data does not represent the total picture, especially in the case of minority women. Only by cross-tabulating data on race and sex will the most complete information be made available, thus showing the effect of sex discrimination and of sex-plus-race discrimination, in order to address effectively the problems encountered by minority women.[646]

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[644] As of October 1974, the target date had been reset to January 1975. Vaughn letter, supra note 559.

[645] Echols and Harmon interview, supra note 574.

[646] For example, a black female who is part of a two-income family or who is the head of household is at a distinct disadvantage in that she may be doubly discriminated against because of both her race and her sex.

Additionally, because VA's affirmative marketing regulations have not yet been finalized,[647] data are still unavailable for individual subdivisions. Thus, VA is not able to uncover problems with respect to individual builders and developers.

Finally, although the VA's collection of racial and ethnic data on purchases made with the aid of VA loans is generally impressive, its use of these data is wanting. The central office itself has made insufficient use of the data it collects and analyzes. When the data reveal apparent inequities, the primary action taken is investigation of the activities of the field station in question in conjunction with the routinely scheduled evaluation[648] of that office.

The field stations have assumed only a minor role in using these data. Acquired property data are hand-tabulated in the field stations and sent directly to Washington without analysis by field personnel. Raw data from the loan guaranty applications are sent by the field stations to VA's data processing center, which in turn forwards the tabulations to the central office. Again, no field analysis is made.

None of the field stations reviewed showed any inclination to use the data as a basis for investigation of the operation of their programs, or as a means for measuring their own progress in increasing minority participation in VA housing programs. Further, field stations have been provided with no instructions as to the use of racial-ethnic data to which they presently have access.

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[647] These proposed regulations are discussed further in Section IV A. infra.

[648] The regularly scheduled reviews are discussed further in Section II supra.

In April 1974, the Washington office staff stated that they provided no feedback to the field stations on the data collected in any of its programs.[649] In fact, VA staff stated that they were uncertain if any feedback was needed until the results from the expanded data system were available in July.[650] This argument overlooks the fact that VA has been collecting some racial and ethnic data for many years and that these data have uncovered fair housing problems.[651] On the basis of past experience, therefore, VA should plan on a regular basis to inform field stations of the results of its data collection efforts.

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[649] Echols and Harmon interview, supra note 574. In April 1974, Loan Guaranty staff were in the process of developing a system to identify monthly trends in VA programs but stated that it was too early to tell total trends at that point. Id. More recently VA noted that it has advised field stations of a comparison between their minority participation levels and the minority group representation within their areas of jurisdiction. Vaughn letter, supra note 559.

[650] Echols and Harmon interview, supra note 574.

[651] For example, the VA knows that minority sales participation in its acquired property program is often on a segregated basis. See p. 244-45 supra.

IV. Fair Housing Program Requirements

A. New Housing--Affirmative Marketing

On August 25, 1972, the VA published a notice of proposed regulations[652] to institute an affirmative fair housing marketing program similar to that already instituted by HUD in February 1972[653] and by the Farmer's Home Administration (FmHA) of the Department of Agriculture in December 1972.[654] The proposed affirmative marketing regulations require new VA-approved subdivisions and new VA-appraised housing to be marketed to all prospective buyers in the community, including minority residents. Affirmative marketing would be assured through submission of a marketing plan by the individual developer or builder to the VA.[655] Approval of the plan would be a necessary prerequisite to receiving VA approval or appraisals.

The greatest weakness of these requirements is that they do not extend to housing in subdivisions which have already received VA approval.[656]

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[652] 37 Fed. Reg. 17217 (Aug. 25, 1972).

[653] 24 C.F.R. § 200.600 et. seq. (1973).

[654] 7 C.F.R. § 1822.381 et seq. (1972). The FmHA regulations are not nearly as specific or comprehensive as those published by HUD. For example, unlike HUD, the Farmers Home Administration does not require a written affirmative marketing plan from builders and developers indicating how they will comply with nondiscriminatory requirements.

[655] Such a plan might include programs for publicizing the availability of units to minorities and specifically recruiting buyers and tenants for minority hiring, and for educating the builder's own staff on fair housing responsibilities.

[656] Since subdivision approval is received prior to construction, an undetermined number of houses previously approved have not yet been sold.

Nonetheless, the proposed regulation could be a significant step forward by the VA from paper compliance to true affirmative action as required by the 1968 Fair Housing Act. The VA, however, has procrastinated in issuing the regulations, which have not yet been published in final form. In the fall of 1973, VA officials' explanation for the delay was that the requirements "have been revised for compatibility with the current basic purposes of the VA loan program and are under staff review."[657] VA officials referred to a speech by Floyd Hyde, Under Secretary of HUD,[658] which they interpreted as deemphasizing civil rights in government housing programs as another reason for the delay.[659] The officials further indicated that the VA had postponed the issuance of these requirements until the President made a statement on Federal housing programs and policies.[660]

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[657] VA response, supra note 587.

[658] Remarks by Floyd H. Hyde, Under Secretary of Housing and Urban Development, before the Los Angeles Area Chamber of Commerce, Los Angeles, Cal., June 18, 1973.

[659] Echols interview, supra note 569.

[660] VA response, supra note 587.

This statement was issued in September 1973 and did not contain specific proposals relating to equal housing opportunity nor did it relate to or affect VA programs.

As of April 1974, more than 7 months after this statement was made, the regulations were still not forthcoming. At that time, VA's explanation for the delay was that it is attempting to evolve a plan which will be more effective than that which HUD has implemented. VA staff also believe that the results of the new data system[661] must be available before they can issue the regulations. They argue that through the data system the VA will know if there is a fair housing problem in VA programs.[662]

It is inexcusable that VA has so greatly delayed the issuance of its affirmative marketing regulations. Housing discrimination, resulting in racial and ethnic polarization, continues to exist throughout the

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661. This sytem is discussed in Section III C *supra*.

662. Echols and Harmon interview, *supra* note 574.

country, and builders and developers are among those responsible for perpetuating segregated living patterns.[663]

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[663] During 1973 the Department of Justice filed several suits alleging racial discrimination by builders and developers. For example, on July 17, 1973, the Department of Justice filed a housing discrimination suit against Snow Construction Co., Inc., of Boca Raton, Fla. The suit charged the company with refusing to sell homes and home sites to blacks at one of its developments. On July 19, 1973, Snow Construction signed a consent decree which permanently enjoined the firm from engaging in any racially discriminatory practice in the sale of real estate. In addition, the company was required to use objective standards in the sale of real estate, to post fair housing notices, to advertise in black area newspapers, and to inform major employers of the availability of homes and home sites.

On July 20, 1973, the Department of Justice filed a housing discrimination civil suit against R. C. Fowler Properties, Inc., in Wilmington, N.C., for refusing to sell homes in white subdivisions to black persons. The suit charged the firm with following a policy and practice of racial discrimination by steering prospective black home buyers to all-black neighborhoods and by refusing to show black persons homes in white subdivisions. As a result of these discriminatory practices, one subdivision developed by the firm was substantially all white and another was substantially all black. The firm signed the consent decree which permanently enjoined it from practicing racial discrimination in the sale and rental of real estate. In addition, the company was required to post fair housing signs in its offices, to advertise in a weekly newspaper serving the black community, and to notify black real estate brokers of its nondiscriminatory policy.

On September 11, 1973, the Department of Justice filed a housing discrimination suit against Custom Craft Construction Co., Inc., of Dayton, Ohio, charging that it was quoting higher prices to black persons and was misrepresenting to blacks that houses were not available for purchase. On March 12, 1974, Justice obtained a consent decree which permanently enjoined Custon Craft from violating the Fair Housing Act of 1968 and required the firm to display fair housing signs in offices and model homes and to include an equal housing opportunity statement in advertising.

VA recently indicated to this Commission that:

> ...the Snow Construction Co., Inc. of Boca Raton, Florida, and Custom Craft Construction Co., Inc. of Dayton, Ohio, are not now and never have been participants in the VA loan guaranty program. It should also be noted that VA has no record of any notice from the Justice Department concerning the case against nor the consent decree signed by R.C. Fowler Properties, Inc. of Wilmington, North Carolina. Vaughn letter, supra note 559.

The failure of the central office to follow through on the proposed affirmative marketing requirements is reflected by the lack of preparation in the field offices for implementation of the requirements. Although, in August of 1972, all LGO's were sent a copy of the proposed affirmative marketing regulations and a draft circular for their implementation, as of fall 1973, few LGO's had taken any concrete steps toward preparing their offices or their clientele (builders and developers) for the new requirements.[664] The New Orleans LGO said he had made no preparations to implement the new requirements.[665] The Waco LGO stated that even though the office holds periodic meetings with area builders,[666] the proposed regulations had never been discussed with them.[667] The LGO in Chicago had not prepared for the implementation of the regulations because, in fact, he disapproves of them. He stated that builders tell him HUD enforces their affirmative marketing regulations too stringently and this has lost HUD business.[668]

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[664] This was in spite of the fact that the LGO in each office visited believed that the regulations would be issued imminently. Also, HUD area office staff interviewed by the Commission indicated that builders needed extensive technical assistance from HUD in order to understand and properly implement HUD's affirmative marketing requirements.

[665] Griener inteview, supra note 607.

[666] These meetings concern such matters as the technical requirements for subdivision approval.

[667] William Miller interview, supra note 606.

[668] Leth interview, supra note 605.

The Los Angeles Loan Guaranty Office is one exception to VA's inactivity in this area. It has met with HUD equal opportunity staff to learn of the problems they have encountered in affirmative marketing,[669] and the Los Angeles LGO has discussed the proposed requirements with various builders' associations.[670] In addition, he is planning a training program for loan guaranty staff who will be involved in reviewing affirmative plans and taking part in compliance reviews.[671]

VA's refusal to follow HUD's example in requiring affirmative marketing plans from builders and developers already preparing such plans for HUD has played some part in changing what has been a traditional cooperative arrangement between HUD and VA. In the past, builders could submit an application for subdivision approval to either HUD or VA; and if approval was received from one agency, the other agency would automatically concur. After HUD instituted affirmative marketing requirements[672] and environmental

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669. In San Francisco, the LGO also contacted HUD to determine its procedures in carrying out affirmative marketing requirements, but no discussions have been held with builders or loan guaranty staff.

670. Builders' associations are organizations which lobby on behalf of the homebuilding business.

671. Jarnagin interview, supra note 627. As of May 1974, this training had not yet been formally held. The Los Angeles LGO stated that this was because VA had not yet approved its affirmative marketing regulations. Telephone interview with Gene Y. Jarnagin, Loan Guaranty Officer, VA Regional Office, Los Angeles, Cal., May 2, 1974.

672. HUD's affirmative marketing requirements became effective February 29, 1972.

review procedures[673] which were not required by the VA, builders who had received subdivision approval from the VA but had not complied with the new HUD requirements did not receive automatic concurrent approval from HUD.

Some HUD offices notified builders that they required an affirmative marketing plan even though the applicants had already received VA approval. Other offices negotiated with VA until a joint position was agreed upon. Consequently, in the spring of 1973, VA issued instructions stating that it would make independent subdivision analyses without obtaining the concurrence of HUD. HUD responded by issuing instructions[674] that no VA certificates of reasonable value would be accepted until HUD determined by independent analysis that the subdivisions had complied with HUD requirements. Thus, VA has not only failed to follow HUD's example in requiring affirmative fair housing marketing, but it has acted to separate itself from the HUD requirements by breaking off a traditionally cooperative arrangement for subdivision approvals.

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673. Federal agencies are required by the National Environmental Policy Act of 1969, 42 U.S.C. § 4332 (1970), to prepare statements assessing in detail the potential environmental impact of a proposed action such as recommendations for legislation, policy decisions, and grants under agency programs. Since July 1973, HUD has required environmental impact statements with requests for subdivision approval.

674. Department of Housing and Urban Development, Notice HPMC-FHA 73-13, May 13, 1973.

B. Acquired Property

1. Minority Brokers and Fee Appraisers

In the spring of 1974, the latest data available to show minority participation as appraisers, management brokers, and inspectors in the VA housing program were from June 1973.[675] At that time, 3.3 percent of the management brokers on VA rosters,[676] 2.9 percent of the fee appraisers,[677] and 1.4 percent of the inspectors[678] were minority. The underrepresentation of minorities on these rosters occurs despite the fact that local guaranty officers are generally well informed of the central office's intent to increase minority participation in the sale and management of VA-acquired properties.

The property assignments made to minority participants in VA programs are, nonetheless, fairly respectable, despite the low number of minority participants in the VA programs. In 1972,[679] 12 percent of the property assignments made to management brokers were given to minorities.[680] Of the property assignments given to fee appraisers, 3.4 percent went to minorities.[681]

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[675] Telephone interview with Eleanor Harmon, Special Assistant to the Director, Loan Guaranty Service, Veterans Administration, May 8, 1974, and Summary of Regional Office Responses to DVB Circular 26-73-23.

[676] Of the minority management brokers, 3 percent were black and 0.3 percent were of Spanish speaking background. Id.

[677] Of the minority fee appraisers, 2.2 percent were black, 0.4 percent were of Spanish speaking background, 0.1 percent were Native American and 0.3 percent were Asian American. Id.

[678] Of the minority inspectors, 0.5 percent were black, 0.2 percent were of Spanish speaking background, 0.1 percent were Native American, 0.4 percent were Asian American, and 0.2 percent were other minorities. Id.

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[679] In 1972, VA collected data on minority participation as fee appraisers and management brokers, but not inspectors. At that time it also collected data on property assignments to minority participants in VA programs. When, in 1973, VA added data on inspectors, it dropped its data collection on property assignments. However, VA is currently developing an expanded data system which will again include this information. This system is discussed further **in Section** III C supra. Telephone interview with Eleanor Harmon, Special Assistant to the Director, Loan Guaranty Service, Veterans Administration, May 7, 1974.

[680] There were 178 properties assigned to persons of Spanish speaking background (1.3 percent); 1,450 assigned to blacks (10.6 percent); and 19 assigned to other minorities (0.1 percent).

[681] There were 2,169 properties assigned to persons of Spanish speaking background (0.5 percent); 11,927 assigned to blacks (2.5 percent); and 2,005 assigned to other minorities (0.4 percent).

Overall, however, at the time the Commission interviewed VA regional staf regional efforts to increase the numbers of minorities in these roles were generally insufficient. Only four (3.3 percent)of the management brokers[682] and none of the 161 fee appraisers used by the Waco office were minorities. Nonetheless, the Waco Loan Guaranty Officer's only efforts to attract minority brokers and fee appraisers had been through those already on contract and through inquiries to local real estate boards and appraisers associations.[683] There had never been a formal outreach program to increase minority participation.

The New Orleans Loan Guaranty Office did not have contracts with any minorities out of its 68 management brokers and 90 fee appraisers.[684] Only three (2.0 percent) of Boston's 149 fee appraisers were black; none of the other appraisers were minority and this office had initiated no minority recruitment program.[685] Of the 134 fee appraisers used by the

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[682] Two of these are blacks and two are Mexican Americans.

[683] William Miller interview, supra note 606.

[684] Griener interview, supra note 607.

[685] J.A. Miller interview, supra note 610.

San Francisco office, 5 (3.7 percent) were black and 5 (3.7 percent) were Mexican American.[686] The Los Angeles office was the only office visited which noted a significant degree of minority participation. Of the 267 fee appraisers, 17 (6.4 percent) were black, 6 (2.2 percent) were Mexican American, and 3 (1.1 percent) were Asian American. The VA in Los Angeles contracted with 37 management brokers of whom 5 (13.5 percent) were black and 3 (8.1 percent) were Mexican American. It is estimated that minorities handle approximately one-third of all its acquired property sales.[687]

In the fall of 1973, VA stated that it was currently undertaking a new survey of the number of minority contractors and management and sales brokers utilized by local loan guaranty offices. In April 1974, however, the study had not only not been completed, but the VA did not know when or even if it would be completed.[688] This is consequential because the VA must take the opportunity of that survey to require a stepped-up minority recruitment program in those offices which have thus far been deficient. Further, instructions[689] must be issued to its field stations

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686. Beachel interview, supra note 609.

687. Jarnagin interview, supra note 627.

688. Echols and Harmon interview, supra note 5[illegible]4.

689. These institutions could be similar to those issued in 1970 concerning minorities. See, Department of Veterans Benefits (DVB) Circular 26-70-28, "Minority Property Management Brokers," July 13, 1970. DVB Circular 26-70-37, "Minority Business Enterprise--Competitive Contracts for Repair and Maintenance of Acquired Houses." DVB Circular 26-70-38, "Minority Fee Appraisers--Need for Greater Participation," Sept. 23, 1970.

for increased female participation as brokers and fee appraisers. The VA has no requirement that women be recruited to participate as appraisers, inspectors, or brokers and their participation rate is very low. In June 1973, only 4.2 percent of VA's management brokers were women, as were 1.4 percent of the fee appraisers and only 0.3 percent of the inspectors.[690]

2. Advertising in the Minority Media

The VA requires its field stations to advertise acquired properties in the minority press.[691] Field stations are obligated to inform the central office quarterly of the names of minority newspapers used, the frequency of publication, and the dates of the advertisements. A copy of each advertisement used must be forwarded to the central office for examination.

As of mid-1973, compliance with this advertising requirement was uneven. The Boston office advertised in only one minority newspaper, a black weekly with a circulation limited primarily to the Boston area.

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[690] Summary of Regional Office Responses to DVB Circular 26-73-23, supra note 675.

[691] DVB Circular 26-72-31, July 31, 1972. The VA under this circular requires regional offices to advertise a sampling of properties of every price range in every type of neighborhood. The VA first required field stations to advertise acquired properties in local ethnic presses in September 1969.

The Chicago office advertised in two black newspapers and one Spanish language newspaper.[692] The LGO reported that he had not identified any "stable" Mexican American papers[693] despite the existence of La Raza, a monthly publication which had been in existence for more than 4 years.

The New Orleans Loan Guaranty Office advertised its property in three black newspapers. San Francisco and Los Angeles each advertised in three black and two Mexican American newspapers. Waco advertised in two black and three Mexican American newspapers.

The San Francisco office has made a special effort to reach Native Americans and persons of Spanish background. It submits periodic articles to a Native American newspaper on its equal opportunity policy in the sale of acquired properties, since that publication does not carry any formal advertisements. It also advertises its acquired properties on a Spanish language television station.

In the spring of 1973, the central office developed an extensive list of minority publications throughout the country which is updated quarterly and made available to field offices. LGS now requires advertising in "minority media," which includes radio and television, rather than solely the minority press; and in mid-1973 VA expanded its directory to include the additional minority media.[694]

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692. There are about 144,000 Mexican Americans in Chicago and 86,000 Puerto Ricans.

693. Leth interview, supra note 605.

694. The directory lists the broadcast hours of minority radio and television stations.

V. Counseling

The VA has instituted a counseling program aimed at minority veterans.[695] The program was begun as a pilot project in nine VA field stations and, as of October 1974, had been expanded to a total of 22 field stations.[696] The program is designed to aid minority potential home buyers with their housing needs,[697] rather than to advise them on combating any discrimination that they might encounter.

The pilot counseling projects have met with varying success in the different VA field stations. Although all counselors received their training from a member of the central office staff,[698] the individual offices seem to have developed their own methods for carrying out the program.

The Los Angeles region appears to have the best model for VA counseling programs.[699] There are nine counseling centers in the region. The centers are open from 6 p.m. to 9 p.m. Tuesday and Thursday nights and special appointments may be made at the veteran's convenience. The counselors are trained in loan processing and underwriting, loan servicing, budgeting, construction evaluation, and in the care and maintenance of property. The counselors are also instructed to inform minority veterans of their rights under Title VIII and to encourage minority veterans to seek houses in nonminority areas. The counselors are requested to compile monthly reports including such items as the number of contacts made and whether or not attempts were made to conduct followup on the veterans counseled.[700]

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[695] See DVB Circular 26-71-19, Oct. 19, 1971. This program is discussed in U.S. Commission on Civil Rights, The Federal Civil Rights Enforcement Effort--A Reassessment, 151 (1973).

[696] These are in Baltimore, Md.; Los Angeles, Cal.; Detroit, Mich.; Newark, N.J.; Houston, Tex.; Jacksonville, Fla.; Cleveland, Ohio; St. Louis, Mo.; New Orleans, La.; San Francisco, Fla.; Chicago, Ill.; Atlanta, Ga.; Buffalo, N.Y.; Phoenix, Ariz.; Milwaukee, Wis.; Indianapolis, Ind.; Nashville, Tenn.; Winston-Salem, N.C.; Waco, Tex.; Pittsburgh, Pa.; Philadelphia, Pa.; and Boston, Mass.

[697] VA responses, supra note 587.

[698] VA central office staff set up the counseling programs, spending about a week in each city. The central office staff determined the categories to be covered by the counselors and then chose and trained the counselors. In mid-1973, according to the VA, there were a total of 58 counselors. Of this number, 50 were male and 8 were female. There were 34 whites, 18 blacks, and 6 Spanish speaking counselors.

The New Orleans office uses six staff members as part-time counselors during regular working hours (8 a.m. - 4 p.m.). Counselors are also available on Tuesday and Thursday from 4:15 to 6:15 p.m. The New Orleans Loan Guaranty Office stated that if veterans are unable to make appointments during the designated hours, counselors will meet with them at their convenience.[701]

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[699] Six hundred and sixty-two veterans were counseled by the Los Angeles office in 1972. The program is advertised in nonminority, Mexican American, and black newspapers, and on Spanish language television.

[700] Jarnagin interview, supra note 627.

[701] Griener interview, supra note 607.

The New Orleans counselors go through several short training courses, but although the program is ostensibly aimed at minority veterans, neither the extensive instructions nor the training sessions for counselors touch on the unique problems facing minority home-seekers. The counseling program is advertised in the minority media and through local minority organizations such as the National Association for the Advancement of Colored People and the Urban League.[702]

In May 1973, eight of the Chicago loan processing staff participated in the training program in that region. They had enlisted the assistance of several groups outside the VA.[703] By June 1973, however, all the Chicago counseling programs had become defunct. Since that time, the program has been reestablished.[704]

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[702] Id.

[703] These groups represent such interests as the Chicago model cities program, black veterans' groups from East St. Louis, Ill., and Southern Illinois University, Carbondale, Ill. Leth interview, supra note 605.

[704] Echols interview, supra note 569.

Chapter 4

General Services Administration (GSA)

I. Program and Civil Rights Responsibilities

The General Services Administration is responsible for acquiring and assigning space for Federal facilities.[705] It provides space for Federal agency use through the construction and modification of Federal buildings.[706] If sufficient federally-owned space is unavailable, GSA may purchase or lease privately-owned space.

There are two principal reasons that GSA should ensure that the communities in which Federal agencies locate practice fair housing. First, the Federal commitment to practice equal employment opportunity[707] necessitates that minorities and women not be denied access to Federal jobs by locating these jobs where housing opportunities for those groups are difficult to obtain. Second, like all Federal agencies, GSA is required by Title VIII of Civil Rights Act of 1968 to administer its programs affirmatively to further the purposes of fair housing.

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[705] 40 U.S.C. § 490(e) (1970).

[706] GSA operates 224 million square feet of space in approximately 10,000 federally-owned and leased buildings. General Services Administration, 1973 Annual Report. Most Federal agencies lack the authority to acquire space themselves and must obtain it through GSA. Certain agencies, such as the Department of the Treasury, the Postal Service, and the Atomic Energy Commission have authority to acquire their own space but may request that GSA acquire land for buildings and contract and supervise their construction, development, and equipment. See 1950 Reorganization Plan No. 18, 15 Fed. Reg. 3177, 64 Stat. 1270, 40 U.S.C. § 8490 note (1970).

[707] Executive Order 11478 and the Equal Employment Opportunity Act of 1972 (86 Stat. 103) prohibit the Federal Government from discriminating on the grounds of race, color, religion, national origin, or sex in employment practices. See U.S. Commission on Civil Rights, The Federal Civil Rights Enforcement Effort - 1974 - Employment, Ch. 1 (in preparation).

The Federal Government, like private industry, has been locating its facilities increasingly in suburban and outlying parts of metropolitan areas.[708] These typically are areas in which the supply of housing within the means of lower-income employees either is inadequate or nonexistent. Many of these communities traditionally have excluded minority group families, whatever their income.[709] Metropolitan areas continue to be racially and ethnically polarized, with the suburbs inhabited largely by white nonminorities.[710] Thus, the relocation of Federal installations to suburban communities has caused hardships to lower-income and minority group employees and their families.[711]

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[708] U.S. Commission on Civil Rights, Federal Installations and Equal Housing Opportunity 7 (1970); and District of Columbia Advisory Committee of the U.S. of the U.S. Commission on Civil Rights, The Movement of Federal Facilities to the Suburbs (July 1971).

[709] Over 60 percent of nonminorities living in metropolitan areas live in the suburbs. In contrast, only about 35 percent of persons of Spanish speaking background living in metropolitan areas are located in the suburbs as are under 25 percent of blacks, under 40 percent of Asian Americans, and under 50 percent of Native Americans. U.S. Census of Population: 1970, Vol. 1, Characteristics of the Population, Tables 48 and 108.

GSA recently stated that:

> ...in two very significant and large cases in Region 9 a Government facility was specifically and intentionally located in a suburb or outlying area so as to enhance employment and housing opportunities for minorities. These two cases are the Richmond, California Social Security Western Program Center and the Fresno, California IRS Data Center.
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> In the Fresno case, the site for the Center was selected near the heart of the Mexican-American community which is the largest minority concentration in Fresno. The site, which is at 5045 E. Butler Avenue, is an outlying area, but its location greatly enhanced the job and/or housing opportunities of Mexican-Americans.
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> In the case of the SSA Program Center, which is now in San Francisco but will soon move to Richmond (a suburb of San Francisco), GSA placed great weight on the fact that Richmond was a depressed economic area with the highest concentration of blacks in the Bay area. It is not an affluent high price suburb. Letter from Arthur F. Sampson, Administrator, General Services Administration, to John A. Buggs, Staff Director, U.S. Commission on Civil Rights, Nov. 6, 1974.

Some of the largest Federal moves to the suburbs were made in the 1960's when, for example, the National Bureau of Standards (NBS) moved from the District of Columbia to Gaithersburg, Maryland, and the Manned Spacecraft Center[712] was established in Harris County, Texas, midway between Houston and Galveston.[713] Although there have been no GSA-sponsored Federal agency moves to the suburbs of such magnitude during fiscal years 1973 and 1974,[714] Federal agencies in search of a large amount of space still consider locating in the suburbs as a viable option.[715]

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[710] The nature and causes of the increasing concentration of minorities in urban ghettos and the exodus of affluent whites from the cities are discussed in U.S. Commission on Civil Rights, Equal Opportunity in Suburbia, July 1974, based on public hearings in St. Louis, Mo., Baltimore, Md., and Washington, D.C., and testimony gathered by the Commission's State Advisory Committees in Boston, Mass., Milwaukee, Wis., and Phoenix, Ariz.

[711] Federal Installations and Equal Housing Opportunity, supra note 708, at 9-14.

[712] This is now Lyndon B. Johnson Space Center.

[713] For a discussion on the effect of the opening of these installations, see Federal Installations and Equal Housing Opportunity, supra note 708, Chapter III at 7-19. About 2,750 NBS employees were relocated to Gaithersburg and 5,000 persons were employed at the Spacecraft Center. Some of the moves made during this period may have been motivated by national security concerns.

[714] General Services Administration, Listing of Moves Involving 100 or More Employees, prepared by Clifford Esterday, Administrative Assistant, Public Buildings Service, GSA, March 1974.

When agencies relocate in the suburbs, there is a tendency for their minority employment to decrease sharply. For example, from 1965 to 1969, the first 4 years of the relocation of the National Bureau of Standards from Washington, D.C., to Gaithersburg, Maryland, black employment dropped from 17.3 percent to 14.2 percent.[716] As of November 1973, black employment was still below its 1965 level.

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[715] For example, as of March 1974, the U.S. Mint, Department of the Treasury, was considering two locations for a mint: Lakewood, Colorado, a suburb of Denver, and Denver itself. According to the 1970 census there were 514,678 residents of Denver including 47,187 blacks (9.2 percent) and 86,345 persons of Spanish speaking background (16.8 percent). In contrast, there were 92,755 residents in Lakewood, and only 140 (.2 percent) were black and 4,360 (4.7 percent) were of Spanish speaking background. Access to Lakewood by public transportation is difficult: there are only two early morning Denver City buses from downtown Denver to the Federal Center and two afternoon buses returning to Denver. As of December 31, 1973, the U.S. Mint in Denver employed 461 persons; 30.1 percent were of Spanish speaking background and 9.5 percent were black.

The Health Services Administration of the Department of Health, Education, and Welfare has contracted for a study of available space in the District of Columbia metropolitan area with the hopes of consolidating many employees in one location. Suburban areas are under consideration.

[716] In 1965, NBS employment was 2,750, including 475 blacks. In 1969 its employment was 2,825, with only 402 blacks. Employment statistics obtained from NBS. The Food and Nutrition Service (FNS) at the Department of Agriculture consolidated its Region II staff from the urban areas of Manhattan, Bronx, and Brooklyn, N.Y., by opening a regional office in Princeton, New Jersey, a suburban area with little low- and moderate-income housing. The move began in November 1972 and was completed by April 1973. In June 1972, the FNS employed 288 persons in Manhattan, Bronx, and Brooklyn, including 42 blacks (14.6 percent) and 8 persons of Spanish speaking background (2.8 percent). One year later, after the move had taken place, FNS employed 308 persons, including only 34 blacks (2.6 percent), 7 persons of Spanish speaking background (11.0 percent), and one Asian American. The total minority population had thus dropped from 17.4 percent to 13.6 percent in 1 year.

Similarly, the Geological Survey, Department of the Interior, lost about 20 percent of its minority population during fiscal year 1974 in its headquarters office when that office moved a large number of employees from Washington, D.C., to Reston, Virginia, a suburb about 22 miles from downtown Washington.[717] In general, employment statistics of Federal offices located in suburbs which are beyond convenient commuting distance from the residential areas within the city reflect far fewer minorities than in central city locations.[718] While statistics on the overall employment of women do not appear to reflect any effect from the location of the agency,

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717. Interview with William Thurston, Director of Equal Employment Opportunity, Geological Survey, Department of the Interior, May 22, 1974. The loss of minority employees was so dramatic that it caused the Geological Survey's nationwide minority employment to drop from 10.7 percent to 10.0.

718. For example, Department of Health, Education, and Welfare constituent agencies in the metropolitan Washington, D.C., area whose employees are located largely at suburban sites have a significantly lower rate of minority employees than those HEW agencies with employees located downtown. HEW agencies with major components in Rockville, Maryland, and their minority employment figures are: Center for Disease Control, 16.2 percent; Alcohol, Drug Abuse, and Mental Health Administration, 16.4 percent; Health Resources Administration, 21.0 percent; Food and Drug Administration, 22.0 percent; and Health Services Administration, 26.9 percent. In contrast, HEW agencies located in downtown Washington and their minority employment figures are: Office of Education, 39.0 percent; Social and Rehabilitation Service, 37.9 percent; National Institute of Education, 37.7 percent; and Office of the Secretary, 36.9 percent. The National Institutes of Health, in Bethesda, Maryland, located between the District of Columbia and Rockville, Maryland, had minority employment of 33.7 percent. HEW Employment Statistics, Nov. 30, 1973.

A review of the statistics of major agencies of the Department of Commerce showed similar results. Employment at the National Bureau of Standards in Gaithersburg, Maryland, was 15.1 percent minority; at the National Oceanic and Atmospheric Administration in Gaithersburg, it was 19.7 percent. In contrast, employment at the Office of the Secretary at the main Commerce building in downtown Washington is 32.3 percent minority; the Domestic and International Business Administration was 24.1 percent minority, and the Maritime Administration was 26.3 percent minority. The Patent Office, located in Crystal City, Virginia, and more easily accessible to Washington, D.C., was 46.0 percent minority and the Social and Economics Statistics Administration in Suitland, Maryland, also easily accessible to heavily minority areas in Washington, was 32.3 percent minority. Department of Commerce Employment Statistics, Nov. 30, 1973.

it is not clear if this is because female employees tend to relocate with their agencies when the agencies move to the suburbs, or if the agencies find new female employees once they have moved.

GSA's activities as the Federal Government's real estate agent give it a unique opportunity for ensuring fair housing in communities surrounding Federal agencies. Such communities receive significant benefit just by the Federal presence, especially from large installations. Location of a major installation brings about dramatic physical, economic, and demographic change. The Federal Government brings with it jobs. The needs of the Federal personnel for such services as housing, schools, stores, and banks create more jobs and investment opportunities. The Federal presence often attracts other industry.[719]

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[719] See *Federal Installations and Equal Housing Opportunity*, *supra* note 708. For example, the location of the Manned Spacecraft Center in Harris County, Tex., in the early 1960's brought an economic boom to that area. The population of the area surrounding the Center increased from 6,500 to 40,000 between 1960 and 1970. Bank deposits in the area rose from $4.8 million in one bank in 1961 to $30.9 million in five banks in 1966. Houston attracted 125 aerospace firms and an uncounted number of electronics companies to the area. The National Aeronautics and Space Administration estimated that for every 100 jobs at the Center, 65 additional jobs were created in the community. *Id.* at 9.

Such benefits make the Federal presence an asset to most communities in which it locates, providing significant leverage to the Federal Government in its negotiations for Federal space. GSA could make use of this leverage to ensure that in communities in which Federal agencies have located, housing discrimination is not practiced by real estate brokers, lenders, private citizens, or the local government itself.[720]

A. Executive Order 11512

Executive Order 11512 requires the Administrator of General Services to "initiate and maintain plans and programs for the effective and efficient acquisition and utilization of Federally owned and leased space."[721] The Executive order spells out the Federal policies which the Administrator should follow in providing space for Federal agencies. Two factors which GSA must take into account are of particular interest to minorities and women, who are often disproportionately represented among the low-income employees of a Federal agency.[722] First, in acquiring and assigning space for Federal agencies, GSA must consider the availability of adequate low- and moderate-income housing, accessibility to the site from other areas of the urban center, and the adequacy of parking. Second, GSA is required by the order to "coordinate proposed programs and plans for building and space in a manner designed to exert a positive economic and social influence on the development or redevelopment of the areas in which the facilities will be located." GSA is required to consult with and receive advice from the Secretaries of Housing and Urban Development, Health, Education, and Welfare, and Commerce concerning the impact a selection will have on improving social and economic conditions in the area.[723]

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[720] GSA recently stated:

> In truth, GSA has little leverage of this kind in most of its public building projects. This is due to the simple fact that the occupant agencies for most new Federal Buildings, unlike the Manned Spacecraft Center, are already located in leased space or obsolete Government-owned buildings in the community where a new FB is to be constructed. No new Federal jobs are likely to be created as a direct consequence of the new building, except during its actual construction.
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> We believe that some degree of leverage does exist, since most communities generally look upon a new FB as a sign of progress and as an attractive addition to the local landscape. However, we feel that the Commission on Civil Rights has greatly over-estimated the amount of pressure that GSA can generate by promising a new FB or by threatening to withhold such a structure. Sampson letter, supra note 709.

[721] Executive Order 11512, issued February 27, 1970.

Some other factors which must be taken into consideration are efficient performance of executive agencies, need for development and redevelopment of areas, existence of Government-owned permanent buildings, prevailing rental rates, need for consolidating agencies in a common or adjacent space, and consistency with State, regional, and local plans.[724]

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722. As of May 31, 1973, 67 percent of all minority Federal employees were employed at the GS-6 level and below. As of October 1972, 74 percent of all female employees were employed at the GS-6 level and below.

723. In addition, GSA is required to coordinate proposed programs and plans with the Office of Management and Budget, the Civil Service Commission, the Office of Emergency Preparedness, the Department of Defense, and the executive agencies concerned.

724. GSA has recently informed this Commission that "[i]t is [these] other considerations which make GSA decisions so difficult." Sampson letter, _supra_ note 709.

Despite the clear need for GSA to incorporate fair housing concerns into its space acquisition processes, the Executive order contains no explicit provision for GSA to consider the extent to which housing is available on a nondiscriminatory basis in the vicinity of the proposed location for a Federal agency. In August 1972, GSA stated that Executive Order 11512 was in the process of being revised.[725] GSA staff indicated that this revised Executive order would give GSA responsibility for considering fair housing conditions in the location and relocation of Federal agencies. The proposed revision, however, was not sent to the Attorney General for legal clearance until March 7, 1974,[726] and has not been issued as of May 15, 1974.

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[725] Interview with I.E. Friedlander, Executive Director, Public Building Service, and John Melnik, Acting Director, Federal Buildings Fund, Management Division, Public Buildings Services, General Services Administration, Aug. 21, 1972.

[726] Letter and attachment from Stanley Ebner, General Counsel, Office of Management and Budget to William Saxbe, U.S. Attorney General, Mar. 7, 1974. The proposed Executive order states:

> It is the policy of the Federal Government that in the selection of sites for Federal facilities consideration shall be given to the availability of adequate low and moderate income housing on a nondiscriminatory basis and the adequacy of access to such sites from places of residence.

Another important revision of this Executive order is that it would explicitly apply to all agencies with authority to acquire space,[727] not only to GSA.[728] This would vastly increase the express Federal responsibility for insuring adequate low- and moderate-income and fair housing in the vicinities of Federal agencies.[729] There has been disagreement as to whether Executive Order 11512 must be followed by all Federal agencies in acquiring and utilizing office buildings and space. It apparently has not been interpreted by HUD as being applicable to agencies other than GSA.[730] It appears, however, that Executive Order 11512 is generally applicable.[731] Section I of the Executive order, which speaks about initiation and maintenance of plans for acquiring and utilizing federally-owned and leased space, concerns only the Administrator of General Services. Nonetheless, Section 2, which speaks about Federal policies for acquiring, assigning, reassigning, and utilizing office buildings and space, directs that these policies be followed both by the Administrator of General Services and by the heads of executive agencies.[732]

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[727] This authority is discussed in note 706, supra.

[728] The proposed Executive order states:

> The head of each executive agency...shall establish an effective and systematic arrangement /for using/ the availability of low and moderate income housing on a nondiscriminatory basis...as a guideline in selection of all sites for Federal facilities by his agency. Such arrangements shall be established and administered in coordination with the Secretary of Housing and Urban Development. Proposed executive order contained in Ebner letter, supra note 726.

[729] The Federal Government occupies 403,232 buildings, a total of 2,483,677,419 square feet of space, inside the continental United States. GSA controls less than 10 percent of that space. See note 706 supra.

There are no directives requiring Federal agencies in general to take the adequacy of fair housing and low- and moderate-income housing into account in planning for their space needs. It is, however, the explicit inclusion of all Federal agencies in the proposed Executive order which has delayed its issuance. HUD, in particular, has been resistant to the proposed order as it would increase its responsibility for providing to Federal agencies information on

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730. This is inferred because HUD wrote to GSA that the proposed Executive order would have the effect of extending the responsibilities under Executive Order 11512 to cover non-GSA-acquired sites. Letter from George Romney, Secretary of Housing and Urban Development, to Caspar W. Weinberger, Director, Office of Management and Budget, July 20, 1973.

731. See also telephone interview with Charles Simms, General Counsel, Office of Management and Budget, Sept. 13, 1973. Mr. Simms stated that it had been his understanding that Executive Order 11512 in fact applies to all Federal agencies. It would appear that GSA, too, holds this belief. See letter from Michael J. Norton, Regional Administrator, General Services Administration, Denver, Colo., to Joseph C. Muskrat, Regional Director, U.S. Commission on Civil Rights, Denver, Colo., Mar. 13, 1974.

732. Only the GSA Administrator, however, is directed to consult with the Secretaries of HUD, HEW, and Commerce in carrying out these policies.

the social and economic conditions in the area in question.[733]

B. The HUD-GSA Memorandum of Understanding

GSA's responsibility to provide leadership in fair housing in the location and relocation of Federal agencies is enunciated in an agreement between GSA and HUD which states that GSA "will pursue the achievement of low- and moderate-income[734] and fair housing objectives."[735] This Memorandum of Understanding was issued pursuant to Executive Order 11512 and to Title VIII of the Civil Rights Act of 1968.[736]

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[733] Romney letter, supra note 730.

[734] The Memorandum of Understanding does not define "low- and moderate-income." This term was not defined until a year after the memorandum was issued. See note 733 infra.

[735] Memorandum of Understanding Between the Department of Housing and Urban Development and the General Services Administration Concerning Low- and Moderate-Income Housing, signed by Robert L. Kunzig, Administrator, GSA, June 11, 1971, and George Romney, Secretary, HUD, June 12, 1971 (41 C.F.R. § 101-17.4801). GSA has entered into no similar agreements with other Federal agencies such as HEW and Commerce with which, under Executive Order 11512, it is required to consult.

GSA recently stated:

> While there may be no formal written agreement, GSA does as a matter of operating policy consult with DHEW, Labor, Commerce, Transportation, Corps of Engineers, etc. In virtually every case that involved the GSA/DHUD Agreement, GSA also wrote to and consulted with affected agencies. Sampson letter, supra note 709.

Its purpose is to spell out the roles of GSA and HUD in ensuring that adequate low- and moderate-income housing and housing in general is available without discrimination on the basis of race, color, religion, and national origin[737] in the vicinity of space acquired or leased by GSA. GSA agrees to pursue the achievement of low- and moderate-income housing and fair housing objectives in all determinations with respect to the location of federally-constructed buildings and federally-leased buildings and space. GSA retains authority to make the ultimate ~~decision~~ concerning Federal space[738] but agrees that advice from HUD concerning the present and planned availability of low- and moderate-income housing on a nondiscriminatory basis is to be the principal basis for its consideration of the fair housing objectives.

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736. Other authorities for the memorandum are Section II of the Housing Act of 1949 (42 U.S.C. § 1441 (1970)) which sets forth the national policy of "the realization as soon as feasible of the goal of a decent home and a suitable living environment for every American family...."; the Housing and Urban Development Act of 1968 (Sections II and 1601; 42 U.S.C. § 1701t (1970) and 42 U.S.C. § 1441A (1970)) which reaffirms this goal; the Public Buildings Act of 1959, as amended, 40 U.S.C. 601-605 (1970); the Federal Property and Administrative Services Act of 1949, as amended, 40 U.S.C. 481 (1970), which gives the Administrator of GSA the responsibility for acquiring and assigning Federal space.

737. Title VIII of the Civil Rights Act was amended August 22, 1974, to include provisions prohibiting discrimination on the basis of sex. It appears that as of October 1974, the Memorandum of Understanding had not been changed to correspond with the amendment's inclusion of sex. Telephone interview with John Melnik, Acting Director, Federal Buildings Fund, Management Division, Public Buildings Services, General Services Administration, Oct. 1, 1974.

738. Section VI of the agreement states that ultimate decision will be based upon the Administrator's determination that "such decision will improve the management and administration of governmental activities and services, and will foster the programs and policies of the Federal Government."

HUD is recognized in the agreement as possessing the necessary expertise to investigate, determine, and report to GSA on the availability of low- and moderate-income housing on a nondiscriminatory basis. HUD agrees to make such reports concerning housing in the vicinity of proposed locations for Federal installations. The agreement also recognizes that HUD possesses the required expertise to advise GSA as to the steps necessary to increase low- and moderate-income housing on a nondiscriminatory basis once a site has been selected.[739] GSA and HUD agree to develop an affirmative action plan to ensure an adequate supply of low- and moderate-income housing if a site is selected without an adequate supply of such housing.

The agreement makes no mention of assuring that any community selected does not discriminate against women in the financing, sale, or rental of housing.[740] Sex discrimination in housing is prohibited by the Housing and Community Development Act of 1974 which amends Title VIII of the Civil Rights Act of 1968. If mortgage financing is difficult for women to obtain in the area, this may preclude some female employees from relocating with their agencies, and GSA and the agency involved must assume responsibility for ensuring against such an occurrence.

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739. In order that HUD can supply GSA with an adequate report, GSA agrees to inform HUD at the earliest possible time of any plans for acquiring Federal space.

740. The authority for the agreement, Title VIII of the Civil Rights Act of 1968, prohibits discrimination on the grounds of race, religion, or national origin in the sale or rental of housing. It does not prohibit discrimination on the ground of sex. Nonetheless, sex discrimination in housing where State action appears may violate the 14th amendment of the Constitution which guarantees equal protection of the laws for all persons. See Reed v. Reed, 404 U.S. 71 (1971) in which the Supreme Court ruled that a provision of the Idaho code which gave preference to men over women as administrators of a decedent's estate violated the 14th amendment.

The agreement contains a provision that it will be reviewed 1 year after its issuance and modified to incorporate any provision necessary to improve its effectiveness in light of actual experience. As of May 1974, this review had not taken place[741] although it should have been conducted in June 1972. Nontheless, GSA's central office reports that all of its regional offices are complying with the agreement. This assertion is based on central office reviews of regional reports.[742] The central office does not plan to undertake reviews following agency relocations to evaluate the adequacy of HUD-GSA procedures in the site selection process.[743]

C. Implementing Procedures

GSA and HUD procedures[744] implementing the Memorandum of Understanding more clearly define the responsibilities of the two agencies in the Federal

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741. GSA recently stated:

> This is not absolutely correct, since both GSA and HUD issued implementing instructions during that month. Drafts of these instructions had been published in the Federal Register on December 11, 1971. Comments received in response to the draft were incorporated in the June 1972 instructions; thus, a limited review was, in fact, accomplished. Sampson letter, supra note 709.

742. GSA response to the Commission's April 1973 questionnaire contained in a letter from Arthur F. Sampson, Acting Administrator, General Services Administration, to Stephen Horn, Vice Chairman, U.S. Commission on Civil Rights, June 7, 1973 /hereinafter referred to as GSA response/.

743. Interview with I.E. Friedlander, Executive Director, Public Buildings Service, General Services Administration, June 19, 1973.

744. 41 C.F.R. § 101-17, Construction and Alteration of Public Buildings; General Services Administration Order PBS 7,000.11, "Availability of Low- and Moderate-Income Housing-DHUD/GSA Memorandum of Understanding of June 12, 1971," (published at 37 Fed. Reg. 11371, June 7, 1972); and Department of Housing and Urban Development, "New and Relocating Federal Facilities Procedures for Assuring Availability of Housing on Nondiscriminatory Basis for Low- and Moderate-Income Employees," 37 Fed. Reg. 11367, June 7, 1972.

space acquisition process by outlining the considerations to be taken into account in acquiring Federal space and the conditions under which the agreement must be applied.[745] GSA procedures discuss the factors which the Memorandum of Understanding adds to the list of considerations to be taken into account when acquiring Federal space,[746] including availability for employees of low- and moderate-income housing on a nondiscriminatory basis, and non-discrimination in the sale and rental of housing.[747] The relative importance of these factors is not clearly articulated, although the regulations appear to give more emphasis to some of the original list of considerations.[748]

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[745] The procedures also detail the information which must be provided by GSA to HUD about each space action, the specifications for HUD's reports, and the requirements for affirmative action plans where HUD provides a negative report concerning the space in question. GSA's implementation of these procedures is discussed in Section II infra.

[746] These are considerations listed in Executive Order 11512. See p. 273, supra.

[747] Also added to the factors to be considered are the adequacy of access from other areas of the urban center and the availability of parking.

[748] For example, the regulations require that the availability of low- and moderate-income housing on a nondiscriminatory basis be "considered." 41 C.F.R. § 101-17.102 (a)(6). In contrast, they require that "material consideration" be given to efficient performance of the missions and programs of the executive agencies involved. 41 C.F.R. § 101-17.102(a)(1).

It seems that the availability of housing on a nondiscriminatory basis should be an absolute requirement; that is, that no agency should be located in a community which does not assure open housing. By relegating equal housing opportunity to the status of only one of a number of factors to be considered, the proposed regulations make it possible for officials to ignore this factor.[749] In Boston, for example, GSA officials stressed that GSA's role is to serve the agency seeking space. They stated that an agency generally has a site in mind and that GSA will do all it can to secure that space unless the costs are exorbitant.[750] They believed that implementation of the agreement requires other agency acceptance and compliance with the basic reasoning for the HUD-GSA agreement.[751] In general, however, they appeared to believe that implementation of the agreement was irrelevant.[752]

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[749] This Commission's review of GSA's implementing procedures is contained in a letter from John A. Buggs, Acting Staff Director, to the Commissioner of Public Buildings, GSA, Dec. 3, 1971, and letter from John A. Buggs, Staff Director-designate, to Commissioner, Public Buildings Service, GSA, Jan. 3, 1972.

[750] Interview with Andrew Canzanelli, Jr., Operational Planning Staff, and John S. McNaughton, Space Management Staff, Public Buildings Service, GSA, Boston, Mass., in Boston, Nov. 14, 1972.

[751] Sampson letter, supra note 709.

[752] Canzanelli and McNaughton interview, supra note 750. These officials believed that the agreement was impractical, since it requires an investigation of fair housing conditions for a site which could not be inhabited for another 5 years and by that time the housing situation might be changed. Further, since these officials did not believe that housing discrimination is a problem in New England, they argued that it was necessary to look only at vacancy rates to determine if nondiscriminatory housing were "available". Id.

GSA continues to believe that it must be permitted to select sites[753] which are inaccessible to low- and moderate-income housing on a nondiscriminatory basis if these sites are rated favorably on the other considerations GSA must take into account.[754] GSA notes that by statute and Executive order, it has the authority and responsibility for making final location determinations with respect to the construction of Federal buildings and the acquisition of leased space. It points out that it must take into account factors other than those which are the subject of the Memorandum of Understanding. It, therefore, argues that it would be impossible for GSA to reject locations solely because of inadequacy of low- and moderate-income housing on a nondiscriminatory basis.[755]

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[753] GSA recently stated:

> Generally in deciding which communities need a Federal building, GSA bases its determination on the current and future need for space as evidenced by existing leased space and continuing Federal requirements. It is important to point out that the amount of existing leased space is critical in determining the need for a Federal building and that leased space is acquired in geographic areas selected by the agencies. Therefore, in fact, GSA selects communities in which to build a Federal building only indirectly. There have been notable expections such as Reston and the Bureau of Standards facility in Gaithersburg, but there have been no such cases since FY 73....
>
> It should be emphasized that under existing procedures the requesting agency, primarily, selects the geographic area in which they [sic] need to be located when the acquisition is to be a "Federal building." Sampson letter, supra note 709.

[754] See U.S. Commission on Civil Rights, The Federal Civil Rights Enforcement Effort--A Reassessment 40 (1973).

The need to consider other factors, however, does not appear to preclude the rejection of sites which do not meet fair housing[756] requirements. The availability of housing on a nondiscriminatory basis should be made an absolute requirement, subject to limited exceptions in which the agency can sustain the burden of demonstrating that its mission[758] demands location in a particular community.[759]

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[755] Id. This interpretation is also considerably more narrow than GSA's 1969 policy which pledged to avoid areas known to lack adequate low- and moderate-income housing for Federal employees. This policy is outlined in a memorandum from William A. Schmidt, Commissioner, Public Buildings Service, GSA, to all GSA Regional Administrators, "Availability of Low and Middle Income Housing in Areas Where Federal Facilities are to be Located," Mar. 14, 1969. See also letter from John W. Chapman, Acting Administrator, GSA, to Howard A. Glickstein, Acting Staff Director, U.S. Commission on Civil Rights, May 12, 1969.

[756] GSA states that this Commission:

> equates the term "Availability of low and moderate income housing on a non-discriminatory basis" with the term "open housing" and is critical of GSA for not addressing _specifically_ the problem of open housing. The terms are not always synonymous. GSA is charged with responsibility of ensuring the availability of low and moderate income housing on a non-discriminatory basis which we do to the greatest extent practicable. Sampson letter, _supra_ note 709.

It should be noted that GSA regulations require that affirmative action plans be developed not only in cases in which a proposal site is deemed inadequate because of an insufficient supply of low-and moderate-income housing on a nondiscriminatory basis, but also when "nondiscrimination in the sale or rental of housing" is inadequate. GSA Order PBS 7000.11, _supra_ note 744, at § 8(d).

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757. GSA has stated:

> GSA will not select sites in those areas where there is an inadequate supply of low and moderate income housing available on a non-discriminatory basis without the initiation of an Affirmative Action Plan. As indicated [in note 753 supra], the agencies make the initial determination as to the geographical area in which they operate. It is then the obligation of GSA to assure that the fair housing requirements of the Civil Rights Act are satisfied in providing the necessary space for agency operations. This is done by virtue of our adherence to Executive Order 11512 and the GSA-DHUD Memorandum of Understanding. Sampson letter, supra note 709.

The requirement for an affirmative action plan is discussed in Section III infra.

758. While it is clear that in some situations the mission of an agency might dictate location in a particular area, such instances would be rare. For example, there are agencies such as the Tennessee Valley Authority or the Saint Lawrence Seaway Corporation whose mission is related to a geographic area. Similarly, the Bureau of Immigration and Naturalization's Border Patrol protects national security by screening individuals entering the United States and, therefore, must have stations located at points of entry to the country.

759. GSA stated that the agencies and not GSA determine the geographic area to which the location will be made. Sampson letter, supra note 709.

Although the Memorandum of Understanding applies to all GSA lease and construction activity, both HUD's and GSA's implementing procedures were designed to greatly restrict the activities to which the agreement would apply. They limit the applicability of the agreement to project development investigations,[760] site investigations,[761] and major lease actions.[762]

Major lease actions are those lease actions where (1) 100 or more low- and moderate-income employees are expected to be employed in the space to be leased and (2) the lease involves residential relocation of a majority of the low- and moderate-income work force, there will be a significant increase in transportation or parking costs, or travel time to the new location will exceed 45 minutes.[763] The agreement may also be applied to any other action of special importance.[764]

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[760] A project development investigation is a field study resulting in a comprehensive planning document containing the data and information needed to fully justify Federal or lease construction, purchase of a building, or major alteration project for housing Federal activities.

[761] A site investigation is a field study to consider all potential locations for a new project within a delineated area of a particular community and to present, as an end product, three sites, ranked in order of desirability, for the proposed project.

[762] A lease action is a lease of space by GSA for which there is no existing lease (new lease), a lease by which occupancy is continued after expiration of an earlier lease (succeeding lease), or a lease which cancels or replaces an existing lease prior to its expiration (superseding lease).

[763] Major lease actions also include lease actions which will result in a 20 percent increase in travel time if the travel time to the present facility already exceeds 45 minutes.

[764] GSA retains authority, by the regulations, to determine what lease actions might be of "special importance."

The agreement does not apply to the relocation of a Federal agency to a building currently owned or leased by the Federal Government or to a large number of lease actions in which employees will retain their former housing. Indeed, in fiscal year 1973, out of a total of 1,831 lease actions, GSA determined that the HUD-GSA agreement was applicable in only 11 cases.[765] While this limitation in the agreement is seemingly practical because it obviates a review of situations in which most Federal employees are not seeking new housing, the outcome is to greatly curtail GSA's authority.[766] It disregards the possibility that employees are currently forced to live in segregated housing or housing beyond their budget. To obtain the greatest leverage, the agreement should be used to require the development and execution of affirmative action plans to correct housing deficiencies in communities in which Federal facilities are currently located.[767]

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[765] Letter from John W. Melnik, Acting Director, Federal Buildings Fund, Management Division, Public Buildings Service, GSA, to Jose Garza, Equal Opportunity Specialist, U.S. Commission on Civil Rights, Aug. 28, 1973.

[766] GSA recently stated:

> /I/t should be pointed out that the great majority of the lease actions cited involve the expansion needs of Federal agencies at existing locations and consolidation of fragmented Federal activities. Some criteria must be established as to those cases which will require HUD/GSA agreement application. Such criteria must meet existing budgetary and personnel ceilings. We feel the current criteria is /sic/ sufficient. Sampson letter, supra note 709.

Introducing a requirement that the relocation of 100 or more low- or moderate-income employees must be involved caused hardships to employees of smaller installations. For example, the Memorandum of Understanding was not applied to the proposed expansion of a National Park Service Station at Lukeville, Arizona. In March 1973, there was no housing, at any price range, available for the 10 to 15 employees who would be working there.[768] Clearly some Federal action to provide housing for these persons should be mandatory.

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767. The Commission interviewed staff from GSA's Public Buildings Service in Denver, Colo., Boston, Mass., Forth Worth, Tex., San Francisco, Cal., and Chicago, Ill. These staff members generally did not appear to have any conception of the possible gains from using the HUD-GSA agreement to further fair housing throughout the country. See, for example, interviews with Charles O. Thomas, Operational Planning Staff; L.N. Stewart, Regional Director, Public Buildings Service, GSA, Forth Worth, Tex., in Forth Worth, January 30, 1973; and Eldon L. Kirby, Operational Planning Chief, and G. C. MacClelland, Operational Planning Staff, Public Buildings Service, GSA, San Francisco, Cal., in San Francisco, Mar. 21, 1973.

768. Kirby and MacClelland interview, supra note 767. Present employees at the Lukeville station live in trailers. The failure to apply the agreement to the Lukeville situation was of concern to staff in the San Francisco Regional HUD Office. Interview with June Cleland, Program Management and Control Officer, Office of Equal Opportunity, HUD Regional Office, San Francisco, Cal., in San Francisco, Mar. 19, 1973.

GSA noted that it recognized that there was no housing available at Lukeville and that it had:

> requested funds from Congress to construct residences, obtained the funds, and will construct at least 12 residences to house employees who will be working there. Consequently, not only did the GSA/HUD agreement not apply by its own terms, but there was no need for it in this case because of prompt remedial action taken by GSA on its own initiative. Sampson letter, supra note 709.

II. Execution of the Agreement and Implementing Procedures

A. Information Sent From GSA to HUD

During fiscal year 1972[769] and 1973,[770] GSA requested HUD ad-

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769. During fiscal year 1972, GSA requested HUD advice concerning 21 site investigations, 20 project development investigations, and 22 lease actions. GSA response to U.S. Commission on Civil Rights July 1972 Questionnaire contained in a letter from Arthur F. Sampson, Acting Administrator, General Services Administration, to Theodore M. Hesburgh, Chairman, U.S. Commission on Civil Rights, Aug. 2, 1972, and General Services Administration, Projects Referred to HUD June 1, 1971 to June 30, 1972, internal undated report.

770. During fiscal year 1973, GSA requested HUD advice for all of its 36 site investigations, all of its 13 project development investigations, and 11 of its 1,831 lease actions. HUD advice was thus solicited for the following cities during that year: (in some of these cities, HUD advice was solicited more than once) Region I, Boston, Mass.; Region II, Camden and Princeton, N.J., New York and Syracuse, N.Y., and San Juan, P.R.; Region III, Baltimore, Prince George's County, and Montgomery County, Md.; Parkersburg and Wheeling, W. Va.; Region IV, Birmingham, Ala., Fort Lauderdale and Orlando, Fla., Atlanta, Athens, and Rome, Ga., Hattiesburg, Miss., Winston-Salem, N.C., Aiken and Florence, S.C., Knoxville and Nashville, Tenn.; Region V, Chicago, Ill., Indianapolis, Ind., Akron, Columbus, Dayton, and Youngstown, Ohio, LaCrosse and Madison, Wis.; Region VI, Iowa City, Iowa; Jefferson City, Mo., and Lincoln, Neb.; Region VII, New Orleans and Shreveport, La., Oklahoma City, Okla., El Paso, Galveston, and Laredo, Texas; Region VIII, Denver, Colo., and Aberdeen, S.D.; Region IX, Tucson, Ariz., Berkeley, San Diego, Santa Ana, Santa Rosa, and Van Nuys, Cal., and Honolulu, Hawaii; Region X, Anchorage, Alaska, Pocatello, Idaho, Eugene and Portland, Oreg., and Wenatchee, Wash. GSA response, *supra* note 742.

vice 120 times.[771] When requesting HUD advice, GSA is directed by its procedures to inform HUD promptly of the pending investigation and supply the following information:[772]

(1) the number of low- and moderate-income jobs[773] anticipated at new or relocated facilities when fully staffed and

(2) the delineated area within which the specific site will be considered or the lease action is anticipated.

GSA has generally given HUD information about the location of the proposed Federal site, but it has been less consistent in supplying

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[771] The analysis which follows is based on a review of the GSA-HUD correspondence concerning 30 of these instances, 25 percent of the cases in which the agreement was applied during fiscal year 1972 and 1973. The correspondence reviewed was principally from Region I (Boston), Region V (Chicago), Region VII (Fort Worth), and Region IX (San Francisco), the regional offices visited by Commission staff in conjunction with this study.

[772] GSA Order PBS 7000.11, supra note 744, Sections 8a and 9b. In the case of a pending project development investigation, GSA is merely required to supply HUD with a delineation of the area being surveyed.

[773] GSA and HUD define low- and moderate-income as being "equal to or less than the median family income established by HUD for the housing market area under consideration." In the case of Federal employees, low- and moderate-income is defined as including "all grade levels from GS-1 through that grade level the mid-point of which is nearest to the dollar figure of the median family income for the area." GSA Order PBS 7000.11, supra note 744 , Section 4 and HUD Handbook 8030.1, Chapter 1, Paragraph 3.b.

HUD with the required employee information.[774] As late as January 1973, more than 6 months after the implementing procedures were issued, HUD had to request this information from GSA because it had not been routinely forwarded in the request for a site investigation.[775]

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774. A review of GSA's San Francisco and Denver Regional Office files indicated that the regional offices did not always supply HUD with the necessary information on the number of low- and moderate-income employees to be assigned to the proposed facility. See letter from E.W. Baughman, Regional Director, Public Buildings Service, GSA, San Francisco, Cal., to R. E. Boldt, Assistant Regional Administrator for HUD, San Francisco, Cal., July 13, 1972, concerning the selection of sites in Tucson, Ariz., Honolulu, Hawaii, San Diego, Santa Ana, Van Nuys, and Santa Rosa, Cal., and letter from Joseph L. Cohen, Acting Regional Administrator, GSA, Denver, Colo., to Robert C. Rosenheim, Regional Administrator, HUD, Denver, Colo., July 19, 1972, concerning a site in Aberdeen, S.D.

775. Letter from George J. Vavoulis, Regional Administrator, HUD, Chicago, Ill., to John W. Chapman, Jr., Regional Administrator, GSA, Chicago, Ill., Jan. 9, 1973. This letter concerned GSA's request for information in connection with a site investigation in Madison, Wis. In April 1972, GSA requested a report from HUD (letter from John V. Chapman, Jr., Regional Administrator, GSA, Chicago, Ill., to George J. Vavoulis, Regional Administrator, HUD, Chicago, Ill., Apr. 26, 1972) and as of December 1972, GSA had not supplied the relevant information on low- and moderate-income jobs and the delineated area of the proposed site. It was a full 6 months after GSA's request to HUD that HUD became mobilized to request the missing information. As of January 1973, HUD had not supplied its report. See Memoranda to Files from Roger H. Hilgenbrink, Realty Specialist, GSA, Chicago Regional Office, Dec. 11, 1972, and Jan. 8, 1973.

B. GSA Requests for Information

1. Prior to the Issuance of Implementating Procedures

The Memorandum of Understanding requires that GSA consult with HUD concerning the present and planned availability of low- and moderate-income housing on a nondiscriminatory basis in the area in which a Federal building is to be constructed or leased.[776] Prior to the issuance of implementing procedures,[777] however, GSA's requests for HUD reports often, but not always, failed to make clear that such advice was solicited, indicating GSA's almost total lack of concern with using the memorandum to ensure fair housing.

On August 23, 1971, more than 2 months after the memorandum had been signed, the GSA Regional Administrator in Boston wrote to HUD:

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[776] HUD-GSA Memorandum of Understanding, supra note 735, Section 9.

[777] These procedures were not issued until 1 year after the Memorandum of Understanding was signed.

> Your counsel and advice during our investigation /of sites for the construction of a new Federal Office Building in Manchester, New Hampshire/ as provided for under Executive Order 11512 are solicited. We will need assistance in identifying and compiling information on the social and economic aspects of Manchester with particular emphasis on the programs of your department.[778]

There was no mention that the report should contain an evaluation of the availability of low- and moderate-income housing in that area. There was no mention of the Memorandum of Understanding. This request was apparently a standardized one used in many GSA regional offices. It was used in a letter concerning Shreveport, Louisiana, from the GSA Fort Worth Regional Office to HUD in September 1971, 3 months after the memorandum was signed.[779] The Chicago Regional Office made such a request as late as April 1972.[780]

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[778] Memorandum from Albert A. Gammal, Jr. Regional Administrator, GSA, Boston, Mass., to James J. Barry, Regional Administrator, HUD, Boston, Mass., "Site Investigation, Manchester, New Hampshire," Aug. 23, 1971. A similar memorandum concerning a project development investigation in Springfield, Mass., had been sent from GSA to HUD 1 week after the memorandum was signed. See Memorandum from Albert A. Gammal, Jr., Regional Administrator, GSA, Boston, Mass., to James J. Barry, Regional Administrator, HUD, Boston, Mass., "Field Survey, Federal Space Situation, Springfield, Mass. 01103," June 18, 1971.

[779] Letter from Jay H. Bolton, Regional Administrator, GSA, Forth Worth, Texas, to Richard L. Morgan, Regional Administrator, HUD, Fort Worth, Texas, Sept. 15, 1971.

[780] Letter from John U. Chapman, Jr., Regional Administrator, GSA, Chicago, Ill., to George J. Vavoulis, Regional Administrator, HUD, Chicago, Ill., Apr. 26, 1972.

In early October 1971 the GSA Boston Regional Director made a slightly altered standard request; he indicated that his request concerning Pittsfield, Massachusetts, was made under the authority of both the Executive order and the Memorandum of Understanding. He asked for information from HUD regarding HUD's "plans or programs,"[781] but did not inquire as to fair housing conditions in Pittsfield. It was not until later that month that the Regional Director again wrote to HUD concerning Pittsfield, Massachusetts, and asked for "a statement on the status of fair and open housing in the community in general."[782] The pattern in other regional offices was similar.[783]

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[781] Memorandum from Albert A. Gammal, Jr., Regional Administrator, GSA, Boston, Mass., to James L. Barry, Regional Administrator, HUD, Boston, Mass., "Field Survey, Federal Space Situation, Pittsfield, Massachusetts," Oct. 7, 1971.

[782] Memorandum from Albert A. Gammal, Jr., Regional Administrator, GSA, Boston, Mass., to James J. Barry, Regional Administrator, HUD, Boston, Mass., "Federal Space Situation, Pittsfield, Massachusetts," Oct. 21, 1971.

[783] For example, it was not until November 1971 that the GSA Fort Worth Regional Office modified its standardized request for information. In a letter to HUD concerning New Orleans, it mentioned the authority of the memorandum and requested information on low- and moderate-income housing, and for a "statement on the status of Fair and Open Housing in the community in general." Letter from Jay H. Bolton, Regional Administrator, GSA, Fort Worth, Tex., to Richard L. Morgan, Regional Administrator HUD, Fort Worth, Nov. 20, 1971. It was not until June 1972 that the San Francisco Regional Office made a request for a statement on the status of fair and open housing. This was made in a letter from T.E. Hannon, Regional Administrator, GSA, San Francisco, Cal., to Robert E. Boldt, Assistant Regional Administrator, HUD, San Francisco, Cal., June 9, 1972.

Throughout fiscal year 1972, GSA's requests for HUD advice on housing on a nondiscriminatory basis continued to be haphazard. For example, in February 1972, concerning Galveston and Houston, GSA asked for detailed information which would assist in "determining the availability of and accessibility to low- and moderate-income housing for employees at the proposed site."[784] Regarding open housing, however, GSA wrote to HUD only that:

> Your report should conclude with a statement of concurrence with our proposed delineated area, with respect to the availability and accessibility of low- and moderate-income housing on a nondiscriminatory basis for the lower income employees whose jobs will be moved as a result of this new lease action. [785]

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[784] Letters from Jay H. Bolton, Regional Administrator, General Services Administration, Fort Worth, Texas, to Richard L. Morgan, Regional Administrator, Department of Housing and Urban Development, Fort Worth, Tex., Feb. 3 and Feb. 22, 1972. In both cases GSA asked for:

1. Summary information concerning the general type, location, cost, and current availability of all local housing.
2. Any publicly-assisted housing built in recent years and the current approximate vacancy ratio.
3. A listing of current proposed planned low- and moderate-income housing.
4. Geographic areas of urban renewal.
5. Maps indicating public transportation, locations of low- and moderate-income housing, urban renewal, community renewal, and model cities projects.

[785] *Id.*

Such a request is unacceptable, as GSA does not have the resources to make an adequate, independent judgement regarding fair housing. The agreement requires that HUD's advice and not simply that concurrence be solicited.[786]

In April 1972, concerning Riverside, California, GSA asked HUD for "a general statement as to the availability of low- and moderate-income housing on a nondiscriminatory basis."[787] Since the request was only for a general statement, GSA placed no responsibility on HUD for an indepth investigation.

2. Under the Implementing Procedures

GSA's implementing procedures issued in June 1972 made clear what advice should be solicited by GSA from HUD. Following receipt of GSA's request, HUD is required to provide GSA with the following fair housing information:[788]

- A delineation of subareas which appear accessible to low- and moderate-income housing on a nondiscriminatory basis and those which do not.
- A determination of the extent of discrimination in the sale and rental of housing.

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[786] GSA stated, "HUD knows well our purpose and intent and should provide the necessary information for us to act in accordance with Executive Order 11512." Sampson letter, supra note 709. HUD's failure to provide the necessary information in response to GSA's inadequate requests is discussed on pp. 300-03 infra.

[787] Letter from T.E. Hannon, Regional Administrator, GSA, San Francisco, Cal., to Robert E. Boldt, Assistant Regional Administrator, HUD, San Francisco, Cal., Apr. 14, 1972.

[788] GSA Order PBS 7000.11 Sections 7, 8, and 9, supra note 744. If such a report has been previously developed on the area in question, HUD is only required to update that report relative to the availability of housing on a nondiscriminatory basis and the availability of low- and moderate-income housing in the delineated areas.

In addition, in order to demonstrate the availability of low- and moderate-income housing, HUD is required to provide GSA with:[789]

(1) Summary information on the type, location, cost, and vacancy rates for all housing in the area.

(2) A listing, by location, of HUD-subsidized housing in the area, including the racial occupancy and vacancy rates of such housing.

(3) An estimate, by location, of all other low- and moderate-income housing meeting standards for relocation housing,[790] and including the racial occupancy and vacancy rates of such housing.

(4) A listing by location of all subsidized housing planned within the next year.

(5) A listing of competing displacement needs for the subsidized housing.

(6) A delineation of the geographic boundaries of urban renewal, model cities, and neighborhood development projects.

In addition, if specific sites are identified, HUD is required to examine not only the housing situation, but also the transportation system. Public transportation from nondiscriminatory low- and moderate-income housing to the facility is required to be available with schedules conveniently close to opening and closing of business. Travel time on public transportation to the proposed site is required to be equal to or less than that from housing of higher-income employees. Where public transportation is inadequate: a) travel time by automobile may not exceed travel time for higher-income employees and b) the monthly cost of parking may not exceed the average of 8 hours' wages of low- and moderate-income employees at the facility.[791]

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[789] *Id*.

[790] HUD relocation standards are contained in the HUD Relocation Handbook (1371.1) Chapters 2 and 4, (July 1971).

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[791] General Services Administration, PBS Order 7000.11, supra note 276 and Department of Housing and Urban Development, New and Relocating Federal Facilities, supra note 276. This provision is of particular importance to minority and female employees, many of whom are of low- and moderate income. As of July 1972, nearly 80 percent of American households owned automobiles. However, only 53 percent of all families with incomes under $5,000 owned cars and only 41 percent of all families with incomes under $3,000 owned cars. Only 54 percent of all black families owned cars. Similar data are not published for Native American, Asian American, or Spanish speaking background families. They are not published by sex of head of household. U.S. Department of Commerce, Bureau of the Census, Consumer Buying Indicators, Series P-65, No. 44, "Household Ownership of Light Cars and Trucks; July 1971" (February 1973).

GSA's commitment to ensuring fair housing, as evidenced by its letters to HUD, did not appear to increase appreciably in fiscal year 1973, following the issuance of the implementing procedures. In September 1972, several months after the implementing procedures had been issued, a standardized letter similar to that used a year before by GSA regional offices was sent from the Dallas office asking for "assistance in identifying and compiling information on the social and economic aspects of El Paso,"[792] with no mention of fair housing conditions at any income level.

Moreover, GSA's requests often continued to fail to mention the need for information on the extent of discrimination in the sale or rental of housing, regardless of income level. They were often unnecessarily limited only to inquiries about low- and moderate-income housing for Federal employees,[793] although GSA's responsibilities provided it with leverage to ensure that fair housing becomes a reality whenever Federal agencies relocate.

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792. Letter from Jay H. Bolton, Regional Administrator, GSA, Fort Worth, Tex. to Richard L. Morgan, Regional Administrator, HUD, Fort Worth, Tex., Sept. 26, 1972.

793. The Memorandum of Understanding states that GSA will consider the availability of low- and moderate-income housing on a nondiscriminatory basis. Memorandum of Understanding, supra note 735, Section 3. Neither the agreement nor the Executive order appear restricted in their coverage to housing for Federal employees.

For example, in July 1972, concerning proposed buildings in Tucson, Arizona; Honolulu, Hawaii; and San Diego, Santa Ana, Van Nuys, and Santa Rosa, California, GSA wrote to HUD:

> It is requested that a report be submitted on the availability of low- and moderate-income housing on a nondiscriminatory basis.... If your report indicates that the supply of low- and moderate-income housing on a nondiscriminatory basis is inadequate to meet the needs of the personnel of the agencies...it is requested that...action be initiated in conjunction with General Services Administration to develop an affirmative action plan.... 794

3. HUD's Reports to GSA

GSA's requests for HUD advice greatly affect the reports written by HUD. This is evident because, despite the specificity of the Memorandum of Understanding and implementing procedures as to what information should be provided, HUD has frequently ignored these requirements and based its reports upon the requests made by GSA. For example, when GSA failed to request fair housing information,

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794. Letter from E.W. Baughman, Regional Director, Public Buildings Service, GSA, San Francisco, Cal., to R.E. Boldt, Assistant Regional Administrator, HUD, San Francisco, Cal., July 13, 1972. GSA's requests for information concerning Laguna Niguel, Cal., and Aberdeen, S.D., were similar. Letter from T.E. Hannon, Regional Administrator, GSA, San Francisco, Cal., to R.E. Boldt, Assistant Regional Administrator, HUD, San Francisco, Cal., Jan. 11, 1973. Letter from Robert C. Rosenheim, Regional Administrator, HUD, Denver, Colo., to Joseph L. Cohen, Acting Regional Administrator, GSA, Denver, Colo., July 27, 1972.

HUD generally failed to supply it.[795]

In contrast, when GSA asked for information concerning the availability of low- and moderate-income housing on a nondiscriminatory basis, HUD was likely to indicate whether or not it believed that such housing was available.[796] When GSA asked for concurrence with the proposed delineated areas; HUD merely indicated that it concurred.[797]

When HUD's fair housing information was inadequate or omitted altogether from its reports, GSA was not likely to call this to HUD's attention. In fact, GSA has indicated that if HUD does not provide an adequate report, GSA will "move on to build."[798]

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795. See for example, correspondence concerning Springfield, Mass. (Memorandum from M. Daniel Richardson, Area Director, HUD Area Office, Boston, Mass., to Robert W. LaPlante, Assistant Regional Administrator, HUD, Boston, Mass., "Social and Economic Import of a New Federal Building, Springfield, Mass., "Sept. 18, 1971) and Shreveport, La. (Teletype message from Andre J. Bouchardon, HUD Area Office, New Orleans, to Jay H. Bolton, Regional Administrator, GSA Fort Worth, Texas, Sept. 26, 1972.) In Springfield, Mass., GSA staff, recognizing that HUD's report was inadequate, went to the Springfield planning department to collect their own information. GSA found, for example, that much of the public housing was concentrated in an area on the outskirts of the city to and from which there was no public transportation. GSA, however, approved the site. Canzanelli and McNaughton interview, supra note 750.

796. See for example, correspondence concerning: Tucson, Arizona, letter from Andrew Bell, Deputy Regional Administrator, HUD, San Francisco, Cal., to E.W. Baughman, Regional Director, Public Buildings Service, General Services Administration, San Francisco, Cal., Dec. 6, 1972; and Riverside, Cal., letter from Barbara A. Bell, Deputy Director, HUD Area Office, Los Angeles, to T.E. Hannon, Regional Administrator, GSA, San Francisco, Cal., May 27, 1972.

797. See letter from Richard L. Morgan, Regional Administrator, HUD, Forth Worth, Tex., to Jay Bolton, Regional Administrator, GSA, Fort Worth, Tex., Dec. 12, 1972.

798. June 1973 Friedlander interview, supra note 743.

In one notable case -- El Paso, Texas -- GSA's September 1972 request failed to ask for fair housing information. HUD failed to supply it. GSA wrote again to HUD asking for concurrence in its choice of a site, again failing to ask for fair housing information. HUD provided that concurrence without ever reporting on the fair housing situation in El Paso.[799]

In at least one instance, it appears that GSA did not request HUD assistance concerning a site to which the HUD-GSA Memorandum of Understanding applied. In the San Francisco region, GSA proposed three California sites for a social security payment center:[800] Richmond, San Francisco, and Oakland.[801] HUD advice was solicited only with regard to the Richmond and Oakland sites.[802] Thus, GSA did not determine if San Francisco might be a more advantageous site than Richmond or Oakland in terms of fair housing or the availability of low- and moderate-income housing. GSA's regional staff stated that the Richmond site was selected by GSA's central office, implying that responsibility for any failure to observe the agreement rested with Washington.[803] The central office, however, indicated its belief that the requirements of the agreement were executed at the regional level.[804]

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[799] See letters from Richard L. Morgan, Regional Administrator, HUD, Forth Worth, Tex., to Jay H. Bolton, Regional Administrator, GSA, Fort Worth, Tex., Oct. 25, 1972, and Dec. 12, 1972, and letters from Jay H. Bolton to Richard L. Morgan, Sept. 26, 1972, and Nov. 15, 1972.

Similarly, GSA's request for HUD advice concerning Laguna Niguel, California, in January 1972, did not seek information on fair housing, although GSA's letter to HUD indicated awareness of the requirement for locating Federal facilities where there was adequate housing on a nondiscriminatory basis. HUD did not supply fair housing information. GSA subsequently issued a followup report requesting more information on low and moderate-income housing, but it never pressed HUD for fair housing information. See letter from T.E. Hannon, Regional Administrator, General Services Administration, San Francisco, Cal., to R.E. Boldt, Assistant Regional Administrator for Administration, Department of Housing and Urban Development, San Francisco, Cal., Jan. 11, 1972; letter from E.W. Baughman, Regional Director, Public Buildings Service, General Services Administration, San Francisco, Cal., to Barbara A. Bell, Acting Area Director, Department of Housing and Urban Development, Los Angeles, Cal., Mar. 16, 1972; and letters from Barbara A. Bell, Deputy Area Director, Department of Housing and Urban Development, Los Angeles, Cal., to T.E. Hannon, Regional Administrator, General Services Administration, Mar. 10, 1972 and June 28, 1972. GSA recently informed this Commission that:

> Both agencies pursued the matter further and DHUD ultimately concluded that low and middle income housing at Laguna-Niguel was inadequate. As a result, GSA, DHUD, and local interests are developing an affirmative action plan. Sampson letter, supra note 709 .

GSA does not appear to contest the Commission's statement that GSA did not seek information from HUD on fair housing near the Laguna Niguel site.

C. Specifications for HUD Reports

GSA and HUD have not specifically delineated how nondiscrimination shall be measured. As a result, the quality of HUD reports has at best been uneven. In some cities, HUD used the presence or absence of complaints as its principle measure. For example, HUD based its approval of Pittsfield, Massachuetts, on the fact that the Boston Regional Office had "not encountered any complaints or other indications that there is not fair housing" in that city.[805] HUD also approved Aberdeen, South Dakota, writing to GSA that it had received only a "few complaints from renters, but none from home owners." In a city with a total and minority population the size of Aberdeen,[806] it would be difficult to equate "a few complaints" with the absence of discrimination.[807] HUD, nonetheless, concluded, "Generally, it appears that housing in Aberdeen is without discrimination."[808]

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[800] Cleland interview, supra note 768. Ms. Cleland stated that she believed that HUD should have been consulted with regard to this site. Id.

[801] Kirby interview, supra note 767.

[802] GSA response, supra note 742.

[803] In 1973 and 1974 the Center's functions were carried out at Social Security Administration offices located throughout the San Francisco Bay area. GSA estimated that half the Center's 2,000 employees were employed at grade levels GS-6 and lower. GSA also reported that, according to the Social Security Administration, a large number of the employees were one of two wage earners in a family. Relocation might, therefore, create problems if both did not wish to relocate. Kirby interview, supra note 742.

[804] When the three sites were first proposed, HEW did an analysis of the residential patterns of current employees of the center. It showed that they lived all over the San Francisco area. It did not indicate the number of employees who would have to relocate in order to work at each of the proposed sites.

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[805] Letter from James T. Barry, Regional Administrator, HUD, Boston, Mass., to Albert Gammal, Jr. Regional Administrator, GSA, Boston, Mass., Nov. 10, 1971.

[806] As of the 1970 census, Aberdeen, S.D. had 26,476 inhabitants and only 18 were of Spanish speaking background; 7 were black; 289 were Native Americans, and 18 were Asian American. U.S. Bureau of Census, Census of Population 1970, Final Report PC (1) - B-43 (S.D.), Table 27, and telephone interview with Beverly Baca, Ethnic Origins Statistics Branch, Population Division, U.S. Bureau of Census, Apr. 2, 1974.

[807] The absence of complaints has never been a reliable indicator of the absence of discrimination and it is inexcusable that HUD would rely on such a superficial tool. The Commission has commented about this in The Federal Civil Right Enforcement Effort 566 (1971) and To Know or Not to Know: Collection and Use of Racial and Ethnic Data 61 (1973). It is clear that some HUD staff members had the wisdom to look beyond the volume of complaints. For example, in a letter to GSA, HUD's Atlanta Regional Office stated that complaint activities do not represent the scope of discrimination. Letter from T.M. Alexander, Jr., Acting Regional Administrator, HUD, Atlanta, Ga., to J.E. Smith, Regional Commissioner, Public Building Service, GSA, Atlanta, Ga., Feb. 14, 1973.

[808] Letter from Robert C. Rosenheim, Regional Administrator, HUD, Denver, Colo., to Joseph L. Cohen, Acting Regional Administrator, GSA, Denver, Colo., July 27, 1972.

In Phoenix, Arizona, HUD contended that open housing existed in the community because the city had submitted an affirmative marketing plan.[809] In principle, the existence of HUD-approved affirmative marketing plans should be an important consideration in determining the fair housing posture of a community. Nonetheless, HUD has not been monitoring its affirmative marketing plans and thus does not know whether they are being followed.[810]

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[809] HUD also noted that Phoenix has a fair housing law and that a major relocation of employees would be involved. See letter from H.R. Smith, Director, Federal Housing Administration Insuring Office, HUD, Phoenix, Arizona, to Robert H. Baida, Regional Administrator, HUD, San Francisco, California, Aug. 22, 1972, and letter from Robert H. Baida, Regional Administrator, HUD, San Francisco, Cal., to T.E. Hannon, Regional Administrator, GSA, San Francisco, Cal., Nov. 21, 1972.

[810] See Chapter I, Department of Housing and Urban Development, Section IV A2, *supra*.

In Madison, Wisconsin, HUD wrote to GSA that it had consulted with the National Association for the Advancement of Colored People (NAACP), the Urban League, and State officials to determine whether there was housing discrimination in that city.[811] GSA commented that HUD's report concerning Madison was excellent.[812]

In many instances, however, HUD merely commented that adequate low- and moderate-income housing on a nondiscriminatory basis was available, but did not justify how it had reached this determination. In other cases, HUD did little research on the status of open housing in the community reviewed, but based its belief primarily on the fact that there would be sufficient housing available on a nondiscriminatory basis because there would be no major relocation of employees and no major hew hires.[813]

The correspondence concerning Galveston, Texas, illustrates many of the weaknesses in GSA's implementation of the Memorandum of Understanding. In November 1971,. HUD found that the local attitude toward open housing was poor.

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[811] HUD also noted that there were few complaints filed with the Madison Equal Opportunity Commission and none with the Wisconsin Department of Labor, Industry, and Human Relations. Attachment to letter from John W. Chapman, Jr., Regional Administrator, GSA, Chicago, Ill., Jan. 1, 1973.

[812] Memorandum from John W. Chapman, Jr., Regional Administrator, GSA, Chicago, to the Assistant Commissioner for Space Management, GSA, "Madison, Wisconsin--Federal Office Building," Jan. 18, 1973.

[813] See, for example, reviews in Santa Rosa and Van Nuys, Cal.

HUD stated that there was "strong opposition" to subsidized housing and to the "construction of decent housing, open to all families, in good neighborhoods and on good sites." HUD indicated that neighborhoods in Galveston tended to be racially unmixed and that Galveston did not have an open housing ordinance. 814

Despite that report, HUD subsequently wrote to GSA stating its concurrence with GSA's choice. HUD stated:

> Galveston still does not have an open housing ordinance. However, in absence of such an ordinance and, in fact, if they [sic] had one, our Title VIII and Title VI regulations as well as our recently established affirmative fair housing market requirements will serve to ensure that the housing is provided to eligible applicants without regard to race, creed, color, or national origin. 815

HUD clearly provided insufficient information to GSA and has provided concurrence to GSA's choices when it should not have. If the existence of Title VIII of the 1968 Civil Rights Act, Title VI of the 1964 Civil Rights Act, and regulations to implement those titles were sufficient to ensure fair housing, this would be true in all geographic areas and the 1971 HUD-GSA agreement, written long after Title VIII and Title VI, would be unnecessary. The fact is, however, that discrimination occurs regardless of these laws and regulations. It is particularly ironic

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814. Memorandum from G.R. Terry, Director, Economic and Market Analysis Division, to Breaux Castleman, Regional Economist, HUD, Fort Worth, Tex., "Housing Market" Assessment for Galveston, Texas, Requested by General Services Administration," Nov. 18, 1971, transmitted in a letter from D.W. Baker, Assistant Regional Administrator for Community Planning and Management, HUD, Fort Worth, Tex., to Jay H. Bolton, Regional Administrator, GSA, Fort Worth, Tex., Nov. 23, 1971.

815. Letter from Richard L. Morgan, Regional Administrator, HUD, Forth Worth, Tex., to Jay H. Bolton, Regional Administrator, General Services Administration, Fort Worth, Tex., Mar. 3, 1972. Mr. Morgan wrote a similar letter to Mr. Bolton on May 3, 1972, concerning the fact that Oklahoma's fair housing law was not viewed by HUD to be substantially equivalent to Title VIII.

that HUD determined that the absence of a fair housing law in Galveston was irrelevant, since the existence of a State or local fair housing law was frequently central to HUD's approval of a proposed site elsewhere.[816]

Another weakness of HUD's reports was that they did not generally look at fair housing conditions for specific nonblack minority groups. In fact, the Aberdeen, South Dakota, review was the only instance in which the Commission found any HUD report to contain mention of a racial or ethnic group other than blacks. This occurred despite the fact that the cities reviewed included Santa Ana, California, and El Paso, Texas, with large Mexican American populations; Las Cruces, New Mexico, with a large Hispanic population; and Springfield, Massachusetts, with a sizeable Puerto Rican population.[817]

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[816] For example, HUD indicated that the 1968 fair housing ordinance passed by the city of Phoenix "will provide increased opportunities for minorities to secure housing" in the metropolitan area. Memorandum from Merrit R. Smith, Director, Federal Housing Administration, Insuring Office, HUD, Phoenix, Ariz., to Robert H. Baida, Regional Administrator, HUD, San Francisco, Cal., "Report Required by GSA Memorandum," Aug. 22, 1972. In Tallahassee, Fla., HUD found discrimination in the sale or rental of housing in part because there was no State or local fair housing law. Letter from T.M. Alexander, Acting Regional Administrator, HUD, Atlanta, Ga., to J.E. Smith, Regional Commissioner, Public Buildings Service, GSA, Atlanta, Ga., Feb. 22, 1973.

[817] As of the 1970 census, the total population of Santa Ana was 156,601. Of these, 30,652 (19.6 percent) were of Mexican American origin. In El Paso, the total population was 322,261 and 162,357 (50.4 percent) were of Mexican American origin. In Las Cruces the total population was 37,857 and 17,477 (46.2 percent) were identified as being of Spanish origin. In Springfield, Mass., the total population was 163,905 and the Puerto Rican population was 3,101 (1.9 percent). U.S. Department of Commerce, Bureau of the Census of Population, Final Reports PC (1) -B1 (U.S.), Table 667; PC (1) -A1 (U.S.) Table 31; PC (1) -C33 (N. Mex.), Table 112; and PC (S1) -30, Persons of Spanish American Ancestry, Table 2. Other sources estimate the Puerto Rican population in Springfield at up to four times the calculation of the Bureau of Census. See U.S. Commission on Civil Rights, Counting the Forgotten: The 1970 Census Count of Persons of Spanish Speaking Background in the United States (1974), and Massachusetts State Advisory Committee to the United States Commission on Civil Rights, Issues of Concern to Puerto Ricans in Boston and Springfield 79 (1972).

While the criteria HUD used to assess nondiscrimination in the sale and rental of housing were varied, not one of the HUD reports was comprehensive. No HUD reports appeared to be based on a full-scale compliance review of the city concerned. One of the major reasons for this is that, although the implementing procedures state that HUD will investigate fair housing in the community in question, they provide almost no detail on how to conduct such an investigation. It is essential that such investigation include a compliance review with the following components:

(1) Testing[818] of new and existing rental and sale housing at all income levels by appropriately trained personnel. Since HUD suffers from

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[818] Testing is a method of determining whether discriminatory practices exist in the sale or rental of housing by comparing experiences of minority and nonminority "homeseekers." Although some local governments have antitesting ordinances, the Civil Rights Division at the Department of Justice has taken action aimed to get several of these repealed. At the request of the Department of Justice, the City of Madison, Wisconsin, repealed its antitesting ordinance and the City of Milwaukee began action for the repeal of a similar ordinance. In addition, the Department of Justice sought to participate in a private suit seeking to invalidate the antitesting ordinance of Upper Arlington, Ohio. See Department of Justice Press Release "Justice Department Posts New Records in Enforcement of Civil Rights Laws," Jan. 14, 1974.

a shortage of equal opportunity staff, it may be necessary to contract this responsibility to local fair housing groups and organizations with experience in testing. The funds for these contracts could be furnished either by HUD or GSA.

(2) A comprehensive compliance review of the operation of all HUD programs in the proposed site selection area to determine if the locality is complying with HUD equal opportunity requirements. This should include a review of the implementation of all major affirmative marketing plans in the area.[819]

(3) Consultation with local community groups actively engaged in bringing about fair housing in the proposed site area.

(4) A public hearing held by HUD at which the residents of the metropolitan area or region may testify as to their experience in obtaining housing on a nondiscriminatory basis in the proposed site area.[820]

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819. See Chapter I, Department of Housing and Urban Development, Section IV A supra, for a discussion of HUD's affirmative marketing requirements. If HUD had an ongoing program of compliance reviews, it could draw on recent reviews in order to provide the necessary information to GSA.

820. HUD has issued regulations for holding administrative meetings; i.e., public meetings to identify and publicize discriminatory housing practices within a locality and to "promote and assure" equal housing opportunity. 24 C.F.R. § 106. The first such meeting was held in Washington, D.C., in early 1974. The subject of the meeting was equal housing opportunity in the military.

(5) A review of the municipality's fair housing activities including passage of a comprehensive, enforceable fair housing law and the elimination of any exclusionary zoning.[821]

(6) A review of local banking practices to ensure that local banks make mortgage loans to minorities and women as freely and on the same terms as to nonminority males.[822]

Moreover, State and local officials should be notified of all investigations, before they take place, to enlist their support and cooperation for ensuring fair housing throughout the community. The procedures currently provide that State and local officials be notified of pending investigations in connection with proposed construction for Federal facilities,[823] but there is no requirement for informing these officials when a survey is being made to assess a community's general potential for accommodating a Federal activity, or when a review is being conducted in conjunction with leasing a specific facility. Moreover, there is no rule or procedure which would require that information in HUD's reports concerning low- and moderate-income and fair housing be made available to the State, the community, fair housing groups, or even Federal agencies,[824] and thus no feedback is provided for the correction of any deficiencies which may be uncovered.

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[821] Exclusionary zoning ordinances may limit the construction of multi-dwelling buildings, specify a minimum acreage for residential housing, or limit occupancy in private dwellings to persons related by blood or marriage. They often discriminate against racial and ethnic minorities. The Department of Justice has brought suit against Black Jack, Missouri, and Parma, Ohio, charging that these municipalities have used such ordinances to exclude racially integrated housing developments. As of October 1974, there had been no trial in the Parma case which was in district court, pending an appeal of the dismissal of a private suit. In Black Jack the district court ruled against the United States, which has filed an appeal.

[822] Ideally, HUD should obtain information on local banking procedures from the Federal financial regulatory agencies, but through calendar year 1973 these agencies have not adequately monitored banks and savings and loan associations. As of June 1974, these agencies will collect data on the race, ethnic origin, and sex of applicants for home mortgages in selected cities for a trial period. These data should improve the regulatory agencies' ability to monitor the fair housing practices of the lending institutions. See Chapter 2, Federal Financial Regulatory Agencies, Section IV _supra_.

[823] See also, Office of Management and Budget (OMB) Circular No. A-95, 38 _Fed_. _Reg_. 32874, Nov. 28, 1973. Section II of that circular also requires that State and local governments be provided with information on projected Federal development so as to facilitate coordination with State, areawide, and local plans and programs.

The absence of more specific GSA guidelines for measuring nondiscrimination has contributed to the fact that the agreement does not appear to have had positive results in the area of housing discrimination. In fiscal years 1972 and 1973, HUD provided approval to GSA for all cities it investigated except for seven cities in the South.[825]

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[824] Further, no such provisions are contained in OMB Circular A-95. Thus, for example, there is no procedure for automatically informing communities that their zoning ordinances and building codes will be reviewed to determine the extent to which they are compatible with the growth of lower-income and fair housing and that actions taken by the local government to permit the operation of Federal low-income housing programs will be examined.

[825] The seven cities are Aiken, S.C.; Columbia, S.C.; Lexington, Ky.; Fort Lauderdale, Fla.; Tallahassee, Fla.; Jackson, Miss.; and Charlotte, N.C. Nonetheless no corrective action has been required in these cities. GSA response, *supra* note 276. These cities are discussed further in Section III *infra*.

Not one of the HUD reports reviewed by this Commission provided adequate justification for approval of fair housing conditions in those cities. As a result HUD has provided approval to cities in which there is independent evidence that housing is not available to all regardless of race and national origin. For example, Shreveport, Louisiana, in which the public housing authority was sued in February 1974 by the Department of Justice to eliminate racial discrimination[826] was approved by HUD[827] for a courthouse and Federal office building. Houston, Texas, too, was approved in late 1971 by HUD in a project development investigation. Yet in late 1973 a real estate firm selling 3,000 to 4,000 homes a year in Houston was required by a Department of Justice consent decree to adopt fair housing procedures.[828] Similarly, Knoxville, Tennessee, was approved by HUD in a project development investigation, although in November 1973 three major real estate firms in that city were charged by the Department of Justice[829] with engaging in racially discriminatory sales practices, such as steering[830] and blockbusting,[831] that have allegedly perpetuated segregated housing in the Knoxville area. Although HUD must clearly be held responsible for the quality of the reports it writes, GSA has not taken any action to hold it responsible.

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[826] United States v. Shreveport Housing Authority, C.A. No. 74-194 (W.D. La., Consent Decree filed Feb. 20, 1974).

[827] HUD provided no fair housing information to GSA on Shreveport. It did state, however, that "there is no low-income housing available within the central business district and moderate-income housing is available in very limited numbers." Teletype from Andre J. Bouchardon, Assistant Director, Area Office, HUD, New Orleans, La., to Jay Bolton, Regional Administrator, GSA, Fort Worth, Texas, Nov. 18, 1971. HUD did not disapprove the site despite the requirement that adequate low- and moderate-income housing be available.

[828] United States v. Gilbert Gertner Enterprises, C.A. No. 73-H-909 (S.D. Tex., Consent Decree filed Nov. 19, 1973).

[829] United States v. Leon Saroff, C.A. No. 8445 (E.D. Tenn., No. Div. 1973).

III. Affirmative Action Plans

If GSA selects a location which HUD reported as inadequate, GSA must only provide a written explanation to HUD for its reasons for selecting the location.[832] There is no requirement that this explanation be public; for example, in the Federal Register. The implementing procedures do not require GSA to give preference to locations in which open housing for all racial and ethnic groups prevails and in which the supply of low- and moderate-income housing is at least adequate to meet the community needs.

Prior to the announcement of a site selected contrary to HUD's recommendation, a written affirmative action plan must be developed by the Federal agency involved, GSA, HUD,[833] and the community in which the Federal installation will be located.[834] HUD's report and advice are to be used as the basis for the development of the plan. The Memorandum of Understanding states:

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[830] Steering is the practice of realtors of guiding white persons to purchase or rent in white neighborhoods and black persons in black neighborhoods; for example, by failing to inform the customer of the full range of housing opportunities available.

[831] Blockbusting is the action taken by a realtor to induce a person to sell or rent any dwelling by representing that another person(s) of a particular race will move into the neighborhood.

[832] GSA stated:

> The fact that discriminatory housing is against Federal law should be stressed and that GSA is not a law enforcement agency. Within our authority GSA only ensures the availability of low and moderate housing on a nondiscriminatory basis which we do to the greatest extent possible. Sampson letter, supra note 709.

[833] HUD also agrees to give priority consideration to applications for assistance for the housing proposed to be provided in accordance with the plan.

[834] Such a plan must be developed prior to the award of a lease contract contrary to HUD's advice.

> The plan should provide for commitments from the community involved to initiate and carry out all feasible efforts to obtain a sufficient quantity of low- and moderate-income housing available to the agency's personnel on a nondiscriminatory basis with adequate access to the location of the building or space. It should include commitments by the local officials having the authority to remove obstacles to provision of such housing, when such obstacles exist, and to take effective steps to assure its provision. The plan should also set forth the steps proposed by the agency to develop and implement a counseling and referral service to seek out and assist personnel to obtain such housing.[835]

The affirmative action plan must ensure that an adequate supply of low- and moderate-income housing will be available on a nondiscriminatory basis, and that there is adequate transportation from housing to the site, before the building space is occupied or within a period of 6 months thereafter.[836]

The plan is also supposed to contain appropriate provisions designed affirmatively to further nondiscrimination in the sale or rental of housing on the basis of race, color, religion, or national origin.[837] The plan must include: (1) the corrective action specified by HUD in its report[838] to GSA and (2) assurance of the relocating agency that when the old and new facilities are within the same metropolitan area, transportation will be provided for low- and moderate-income employees between the old facility and the new facility until sufficient new housing is built.

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[835] HUD-GSA Memorandum of Understanding, supra note 735.

[836] Id.

[837] Id.

[838] If a proposed site is deemed inadequate on one or more grounds, for example, if there is discrimination in the sale or rental of housing in that area on the basis of race, color, religion, or national origin, the HUD Regional Administrator is required to include in his or her report an outline of corrective action which should be taken to overcome the inadequacies. None of the HUD reports contains such recommendations. Id.

The affirmative action requirement is vague because the responsibilities of HUD, GSA, the agency involved, and the community have not been clearly defined and mechanisms for remedying inadequacies have not been outlined. GSA has not further delineated this requirement[839] because, as of May 1974, no affirmative action plan had been necessitated.[840]

One weakness of the affirmative action requirement is that the actions need not be completed until 6 months after occupation of the building.[841] This substantially undermines the potential effectiveness of the requirement because employees affected by the unavailability of adequate housing might be unable to relocate with their agencies, thus losing most benefits they might derive from the affirmative action plan. Then, of course, if the community fails to carry out the affirmative action plan, but the agency has already relocated, the Federal Government has lost significant leverage which might have been used to require its implementation. Unless GSA and HUD require that affirmative action plans be substantially completed prior to the agency move, they will probably have minimal effectiveness.

Another weakness is that affirmative action plans are not mandated when inadequate low- and moderate-income housing or nondiscriminatory housing is found by reviews conducted in connection with project development investigations. The reports from project development investigations are merely filed away, available for later use when Federal development of the area actually begins.

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[839] The Commission has earlier recommended that the components of the plan be outlined in more detail. See U.S. Commission on Civil Rights, The Federal Civil Rights Enforcement Effort -- A Reassessment 143 (1973).

[840] HUD Handbook 8030.1 further delinates the affirmative action responsibilities for HUD employees. It suggests that as part of the affirmative action plan, a local fair housing ordinance be developed, and that HUD attempt to correct discrimination practices of local banks and work with real estate boards to develop areawide affirmative marketing plans.

[841] HUD-GSA Memorandum of Understanding, *supra* note 735.

The Federal Government should require the correction of any discriminatory housing conditions which are found. GSA should use the results of reviews showing lack of fair housing to put communities on notice that no Federal facilities will be located in that area until positive steps are taken to increase equal housing opportunity.

The tragedy of the failure to make immediate use of information obtained through project development investigations is illustrated by the reviews of Fort Lauderdale and Tallahassee, Florida, and Columbia, South Carolina. In Fort Lauderdale, HUD found[842] a discriminatory housing market:

> --HUD was not able to locate suitable land for low-income housing on a nondiscriminatory basis. HUD based its conclusion on the high land cost, concentration of such housing in minority areas of the city, and reluctance of surrounding political jurisdictions to assist in providing low- and moderate-income housing.
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> --In several areas it was indicated that low- and moderate-income housing was not available on a nondiscriminatory basis.[843]

In addition, HUD found an inadequate supply of low- and moderate-income housing in that city:

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[842] Letter from Edward H. Baxter, Regional Administrator, HUD, Atlanta, Ga., to Theodore Sachs, Acting Regional Director, Public Buildings Service, GSA, Atlanta, Ga., Sept. 5, 1972.

[843] *Id*. HUD's finding of discrimination was based on a review of applications to the Tuskegee Park Neighborhood Development Program and the Open Space Program, a review of HUD's complaints from Fort Lauderdale area which showed 13 verified housing discrimination complaints, and HUD's involvement with exclusionary zoning in that area. HUD's review did not extend to coverage of any judicial enforcement efforts, but was limited to its own knowledge of administrative enforcement of the fair housing law.

-- 85 percent of all new construction in the past 4 years had been for high income housing.[844]

-- The vacancy rate of low- and moderate-income housing was less than 1 percent.[845]

-- There were approximately 1,000 low- and moderate-income families presently living in substandard housing.[846]

-- There was a major short range need for about 1,000 units of low- and moderate-income housing, particularly for large families.[847]

Similarly, in Tallahassee, Fla., HUD found that:[848]

-- There were existing patterns of racially segregated housing which were not being limited.

-- There was discrimination in the sale and rental of housing.[849]

-- There appeared to be no subareas accessible for low- and moderate-income housing on a nondiscriminatory basis.

-- The city was not taking affirmative action to ensure that existing housing was open to all races.

-- The vacancy rate for low-income housing was less than 1 percent.

-- 1,642 occupied units were substandard and beyond rehabilitation and an additional 2,264 occupied units were deteriorated and needed rehabilitation in order to meet minimum housing code standards.

-- There was insufficient development of low-income housing.

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[844] Id.

[845] Id. The vacancy rate throughout the city was near 1 percent.

[846] Id.

[847] Id.

[848] Letter from T. M. Alexander, Jr., Acting Regional Administrator, HUD, Atlanta, Ga., to J.E. Smith, Regional Commissioner, Public Buildings Service, GSA, Atlanta, Ga., Feb. 14, 1973.

[849] HUD's conclusion was based on the following: (1) the racially identifiable residential housing patterns; (2) the absence of a State or local fair housing law; and (3)the failure of the local real estate industry to comply with provisions of the fair housing law. Id.

In Columbia, South Carolina, HUD found[850] that there were racially identifiable housing patterns; there was no local or State fair housing law; and the real estate industry as a whole did not voluntarily adhere to HUD's advertising guidelines,[851] nor did it display HUD's fair housing posters. HUD concluded that there was prima facie evidence of a pattern or practice of housing discrimination in Columbia, South Carolina.

GSA is to be commended because, in each of these cities, it wrote to HUD requesting cooperation and the development of affirmative action plans.[852] HUD, however, was not willing to exercise its full authority under Title VIII. In each case, it merely reminded GSA that a finding of housing discrimination in a general area survey was not sufficient basis for the development of an affirmative agreement,[853] and no Federal actions resulted to remedy the problems of discrimination which were found.

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850. Letter from T. M. Alexander, Jr., Acting Regional Administrator, HUD, Atlanta, Ga., to J.E. Smith, Regional Commissioner, Public Building Service, GSA, Atlanta, Ga., Feb. 22, 1973.

851. For a discussion of HUD's advertising guidelines see Chapter I, Department of Housing and Urban Development, Section IV A, supra.

852. See letter from J.E. Smith, Regional Commissioner, Public Buildings Service, GSA, Atlanta, Ga., to T.M. Alexander, Jr., Acting Regional Administrator, HUD, Atlanta, Ga., May 31, 1973. This letter concerned Fort Lauderdale. GSA sent similar letters to HUD in the cases of Tallahassee and Columbia. HUD stated that such a plan should be developed only where residential relocation is involved and GSA has approved a final site for the building or leasing over the negative recommendation of HUD. HUD also stated that although it had concluded that housing discrimination existed in certain areas, it had not given a negative recommendation on any general area.

853. See letter from T.M. Alexander, Jr., Acting Regional Administrator, HUD, Atlanta, Ga., to J.E. Smith, Regional Commissioner, Public Buildings Service, GSA, Atlanta, Ga., July 3, 1973. This letter concerned Fort Lauderdale. HUD sent similar letters to GSA in the cases of Tallahassee and Columbia.

The HUD-GSA agreement requires that if an affirmative action plan must be developed, counseling and referral services to assist relocating Federal personnel in obtaining housing must also be provided by the agency concerned, with cooperation from GSA and HUD.[854] The agreement makes no provision to assist employees if HUD has not disapproved the site proposed by GSA. Since no affirmative action plans have been required, none of the GSA regional offices visited by Commission staff have provided any counseling or taken the initiative to find out whether such services are being provided by relocating agencies.[855]

GSA has not developed the means of informing employees of relocating agencies of the protection afforded by the HUD-GSA Memorandum of Understanding. Relocating employees who find themselves faced with a discriminatory housing market or with an inadequate supply of low- and moderate-income housing may be unaware that GSA, HUD, and their own agency have a responsibility to prevent such an occurrence.[856]

GSA has not established a mechanism to receive and investigate complaints about an inadequate or unfair housing market in the vicinity of a selected site, or for resolving any other problems arising from insufficient enforcement of the agreement. GSA has indicated that if it received such complaints, they would be referred to the relocating agency, as it does not have the authority or responsibility to handle complaints.[857] Moreover,

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[854] HUD/GSA Memorandum of Understanding, Section 9 (G), supra note 735.

[855] GSA stated that it "does not have the personnel, funds, time, or responsibility to do this, and those agencies involved would probably strongly object if we did." Sampson letter, supra note 709.

[856] The Commission commented on this in The Federal Civil Rights Enforcement Effort--A Reassessment 140 (1973), but GSA has taken no action to remedy this problem since that time.

[857] Interview with Diane Smith, Acting Deputy Director, Office of Civil Rights, and John W. Melnik, Director, Administrative Management Division, General Services Administration, Aug. 23, 1973.

GSA does not believe that it has any responsibility for trying to involve relocating agencies in guaranteeing that there is adequate low- and moderate-income and nondiscriminatory housing at the new location for the employees.[858]

It is true that no laws, regulations, or procedures specifically dictate that GSA must undertake to inform employees of relocating agencies of the protections afforded by the HUD-GSA Memorandum of Understanding or to establish a mechanism to handle complaints arising from insufficient enforcement of the memorandum. Nonetheless, it is clear that there is a need for such services, and there appear to be no laws or regulations which would prohibit GSA from assuming responsibilities for them. Moreover, it is clear that GSA is assigned, by both the Executive order and the memorandum a coordinative role in the process of Federal space acquisition. As a result, most actions which might be undertaken governmentwide to assist in executing the Executive order or the agreement would appear to be appropriately initiated by GSA. To the extent that GSA believes that there are any legal barriers to initiating such efforts, GSA should enter into agreements with other Federal agencies in which they would delegate to GSA lead responsibility for ensuring that specific functions such as complaint handling and providing information to employees are carried out.

IV. Organization and Staffing

The HUD-GSA agreement assigns day-to-day responsibilities for implementing the agreement at GSA to regional staff.[859] The implementing procedures, further, assign the agreement's responsibilities to the Regional Director,[860] Public Building Services (PBS), at GSA.[861] The regional Public Building Service is one of a number of offices within the regional office of GSA,[862] and its director is responsible to the GSA Regional Administrator. Within the regional PBS, two divisions have primary responsibility for implementation of the HUD-GSA Memorandum of Understanding: (1) Operational Planning[863] and (2) Space Management.[864]

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[858] *Id.*

[859] Similarly, HUD regional staff are also provided with explicit responsibilities by the agreement.

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[860] GSA regional offices are listed on the organizational chart on p. 325 infra.

[861] HUD's implementing procedures (see note 144, supra) assign the HUD Regional Administrator overall responsibility for coordinating HUD's implementation of the agreement in the region, and for providing GSA with HUD's recommendation on specific sites. The Assistant Regional Administrator for Equal Opportunity is held responsible for consolidating information and recommendations concerning fair housing for the HUD Regional Administrator, including that needed in conjunction with any affirmative action plans that may be required. The Assistant Regional Administrator may draw upon help from the Assistant Regional Administrators for Housing Production and Mortgage Credit and for Community Planning and Management as well as upon the Regional Economist and other appropriate staff. In addition, HUD assigns responsibility to the directors of area offices for providing the data needed and for making recommendations concerning the adequacy of specific sites with respect to the availability of low- and moderate-income housing on a nondiscriminatory basis.

[862] Other offices includes the Federal Supply Service and the Transportation and Communication Service.

[863] The Operational Planning Division develops and directs regional programs concerning the use and maintenance of Federal building and leased space; it is also concerned with such matters as accident and fire prevention, repairs, and heating.

[864] The Space Management Division is concerned with acquisition, assignment, and utilization of Federal buildings and leased space. There are three other divisions in the Regional Public Service: the Building Management Division, the Design and Construction Division, and the Federal Protective Service Division.

The Operational Planning staff handle the initial planning for and determination of Federal space needs. They conduct project development investigations and prepare project development reports based on these investigations. The Space Management staff are responsible for handling site investigations of specific proposed sites for construction and lease actions after GSA has determined that a new Federal facility will be developed and Congress has approved this plan.

Recommendations for specific sites are made to the Regional Director PBS, by a team of Operational Planning and Space Management staff, based on their investigations and on the input of the relocating agencies and other Federal agencies such as HUD which were consulted pursuant to the Executive order. GSA's central office makes the final decisions on site selections, based on these recommendations.

The Executive Director of GSA's Public Building Service, located in Washington, serves as the overall director and coordinator of the agreement within GSA. The Executive Director has a higher rank than the Regional Directors and reports directly to the Commissioner of the PBS. The Executive Director is in charge of policy development, planning, budgeting, financial management, program evaluation, management improvement, systems development, and administrative activities of PBS.

GSA has an Office of Civil Rights.[865] (See Organization Chart on p. 325). There is also a civil rights office within each GSA regional office which handles internal equal employment opportunity and contract compliance. No civil rights staff, however, are assigned responsibilities under the HUD-GSA agreement although they are sometimes involved in its implementation.[866] The regional staff involved in implementing the agreement sometimes send copies of correspondence to the regional civil rights office, but this is not required.[867]

GSA's fair housing effort continues to suffer from lack of full-time staff to see that specific fair housing assignments of Public Buildings Service under the HUD-GSA agreement are thoroughly implemented.[868] There

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[865] The central civil rights office has about 55 staff members. They are almost equally divided between contract compliance responsibility (under Executive Order 11246) and Federal equal employment responsibility (under Executive Order 11478 and the Equal Employment Opportunity Act of 1972).

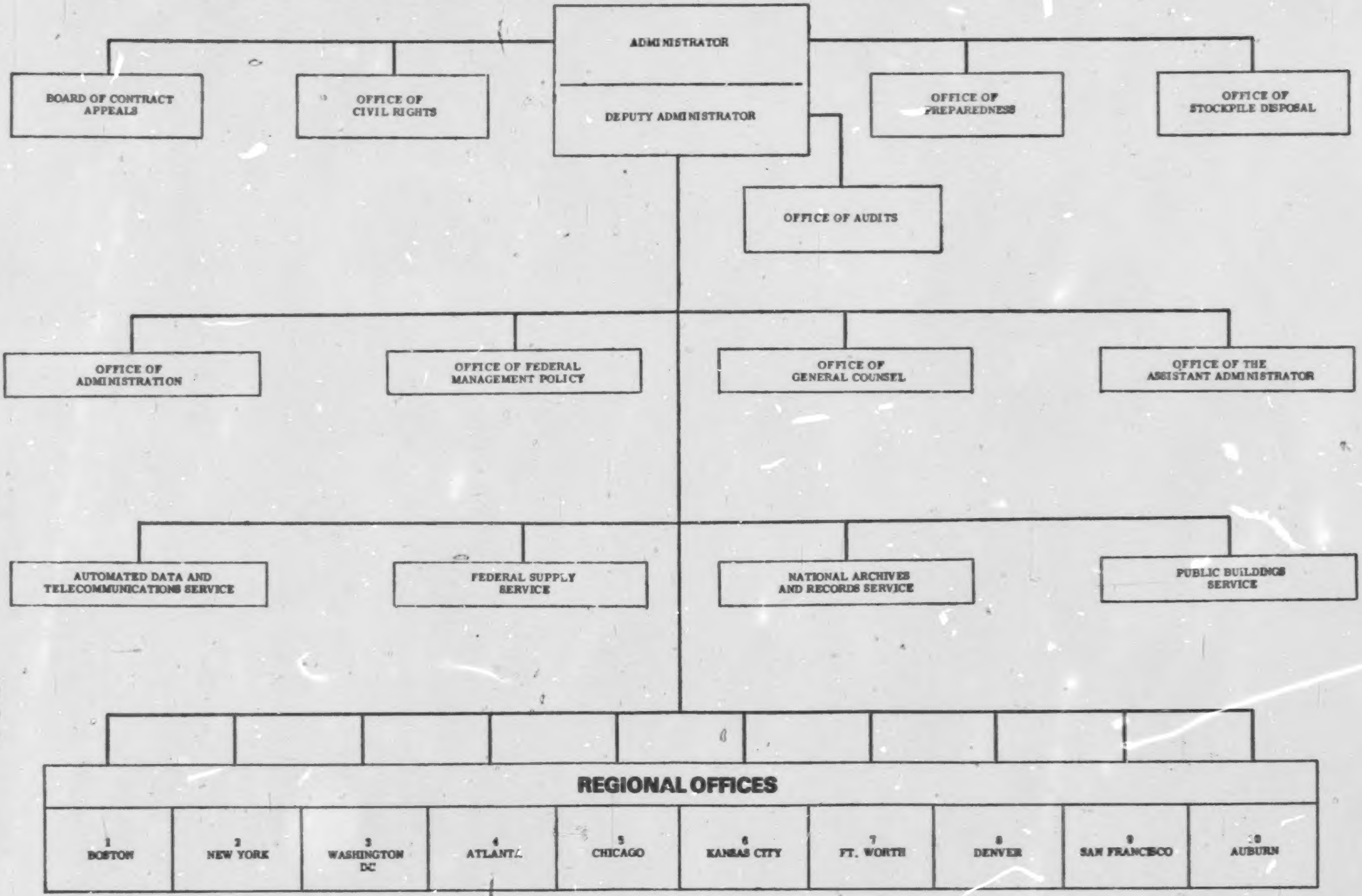
[866] GSA recently stated:

> The Commissioner and Regional Commissioners, Public Buildings Service, in exercising their authority under the DHUD/GSA Memorandum of Understanding draw on the expertise of the Office of Civil Rights as circumstances require. A good example of this participation by the Office of Civil Rights was their involvement with the relocation of the U.S. Geological Survey to Reston, Virginia. Sampson letter, supra note 709.

[867] For example, in the Boston region, the PBS sends the regional civil rights office copies of all correspondence regarding the Memorandum of Understanding, but requests no comments. In the absence of specific requests, the Boston civil rights office has never provided any information to the Boston PBS. In the Fort Worth Regional Office, the PBS has no contact with the regional civil rights office concerning open housing in the vicinity of proposed Federal sites.

[868] As noted in U.S. Commission on Civil Rights, The Federal Civil Rights Enforcement Effort-- A Reassessment 145 (1973), such an assignment would not diminish the role of those officials with existing responsibilities under the agreement, but would increase the quantity and quality of their activity by providing additional training, guidelines, and oversight.

GENERAL SERVICES ADMINISTRATION


ADMINISTRATOR
DEPUTY ADMINISTRATOR
BOARD OF CONTRACT APPEALS
OFFICE OF CIVIL RIGHTS
OFFICE OF PREPAREDNESS
OFFICE OF STOCKPILE DISPOSAL
OFFICE OF AUDITS
OFFICE OF ADMINISTRATION
OFFICE OF FEDERAL MANAGEMENT POLICY
OFFICE OF GENERAL COUNSEL
OFFICE OF THE ASSISTANT ADMINISTRATOR
AUTOMATED DATA AND TELECOMMUNICATIONS SERVICE
FEDERAL SUPPLY SERVICE
NATIONAL ARCHIVES AND RECORDS SERVICE
PUBLIC BUILDINGS SERVICE
REGIONAL OFFICES
1 BOSTON
2 NEW YORK
3 WASHINGTON DC
4 ATLANTA
5 CHICAGO
6 KANSAS CITY
7 FT. WORTH
8 DENVER
9 SAN FRANCISCO
10 AUBURN

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is need for a full-time director who would be responsible for fair housing responsibilities throughout the agency and who would report directly to the Administrator. For example, there is no one in the Public Buildings Service at GSA with adequate expertise to determine whether HUD's reports are adequate.

Staff from the regional Planning and Space Management Divisions attended training conferences in Washington during the fall of 1972. Separate conferences were held for each division, each lasting several days. In both conferences, one-half day was devoted to discussion of the HUD-GSA Memorandum of Understanding, but little emphasis was placed on the fair housing requirements of that agreement. Thus the GSA staff have been given inadequate training concerning the nuances of housing discrimination. Much of GSA's training has focused on the "Area Delineation Model."[869] This model is a procedure for using socioeconomic criteria for selecting locations for Federal[870] building projects within given communities.[871] The model uses such data as the number of low- and moderate-income housing units by census tract and the geographic distribution of Federal employees to determine the social and economic impact of the location of a Federal facility.[872]

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[869] See GSA response, supra note 742.

[870] GSA recently stated:

> /W/e feel that our locational analysis has been improved and refined through a greater emphasis upon coordinated planning with state and local Governments and through a greater awareness of such things as low and moderate income housing patterns, mass transit linkages, and the local transportation network. Our environmental impact statement process is providing all sectors of Government, as well as the public, with an opportunity to provide meaningful input into our decision-making process. Sampson letter, supra note 709.

[871] GSA, A Demonstration Application of the First Stage of the Area Delineation and Site Evaluation Model, undated training guide.

The model, however, makes no use of the distribution of housing units by the race and ethnic origin of the occupants.[873] Thus, for example, a site could be rated as highly favorable because it was accessible to the numerical majority of the community, although it might be highly inaccessible to one or more minority groups.

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[872] The more accessible the location to the general public, the more favorably it would be viewed.

[873] GSA recently stated:

> Technically, this is true. However, one of the model's six indices is based upon the low and moderate income housing distribution in the community. Generally, this includes all units selling for less than $20,000 - $25,000 or renting for less than $150 - $200. We believe that there is a very strong correlation between these housing patterns and the minority housing distribution. Thus, racial patterns are indirectly considered.
>
> Furthermore, two of the other five indices are concerned with unemployment and median income levels. The higher the unemployment rate, the more favorably a location is viewed; and the lower the income level, the higher the rating for an area. We submit that unemployment and income distributions also correlate closely with racial patterns.
>
> Virtually without exception, the model, has delineated a central city location for new Federal construction. We feel that it is a reasonably sound tool for quantifying several important factors, placing a very high priority upon accessibility to the existing low and moderate income housing supply. Sampson letter, supra note 709.

GENERAL FINDINGS AND CONCLUSIONS

1. The Department of Housing and Urban Development, the Veterans Administration, the General Services Administration, and the Federal financial regulatory agencies--the Office of the Comptroller of the Currency, the Federal Deposit Insurance Corporation, the Federal Home Loan Bank Board, and the Federal Reserve System--have taken some positive steps, but the steps have not gone nearly far enough to have a major impact on racial, ethnic, and sex discrimination. The positive actions they have taken have generally been either superficial or incomplete and have had little impact on the country's serious housing discrimination problem.

2. Moreover, HUD has failed to provide adequate guidance to the other agencies, as mandated by Title VIII, despite their poor performances.

3. Title VIII of the Civil Rights Act of 1968, as amended, prohibits discrimination in housing on the basis of race, national origin, religion, and sex. In the event of a refusal to comply with its provisions, the statute only authorizes HUD to use the informal methods of conference, conciliation, and persuasion. These methods have proved inadequate to bring about prompt compliance with the law.

Chapter 1

FINDINGS AND CONCLUSIONS

Department of Housing and Urban Development (HUD)

1. The Department of Housing and Urban Development is the major Federal agency with responsibilities for improving housing conditions in this country. Its duties include the provision of aid for preserving, improving, and increasing the supply of housing and the prevention of housing discrimination on the basis of race, national origin, religion, or sex.

2. Title VIII of the Civil Rights Act of 1968, as amended, Title VI of the Civil Rights Act of 1964, and Executive Order 11063 give HUD authority to ensure equal housing opportunity, but HUD has failed to make maximum use of its powers to bring about compliance with these requirements.

   a. HUD's approach to the prevention and elimination of housing discrimination continues to be largely ad hoc, as it is based, important as these activities are to many individuals, chiefly on the investigation and resolution of complaints.

   b. HUD has acknowledged the necessity for communitywide pattern and practice reviews to ensure equal opportunity in housing, but few such reviews have been conducted. HUD's central office has not issued guidelines for the implementation of these reviews and HUD's central office has not issued specific instructions to the field offices to conduct them.

   c. HUD has conducted some Title VI compliance reviews, most frequently of local housing authorities. These reviews were conducted generally only in response to Title VI complaints.

d. Although HUD received fewer than 200 complaints a month in fiscal year 1973, HUD has been plagued by large Title VI and Title VIII complaint backlogs. HUD reports that this backlog was substantially reduced by a special task force in March 1974.

e. HUD has conducted a campaign to educate the public on its rights to fair housing and on how to file complaints, but the campaign, which resulted in only a moderate increase in the number of complaints HUD received, was not fully extended to persons of Spanish speaking background, Native Americans, and Asian Americans.

f. One obstacle in the handling of complaints has been the slow processing of complaints referred by HUD to State and local agencies which have fair housing powers substantially equivalent to HUD's. Although the delays in the State agencies are often attributed to lack of adequate financial and staff resources, Congress has not provided HUD with funds to enable HUD to give assistance to States for fair housing complaint processing. HUD rarely uses its power to recall complaints when these agencies' handling of complaints is not reasonably expeditious.

g. The greatest stumbling block to HUD's efficient and timely processing of complaints has been that it allows its conciliations to continue indefinitely.

h. When negotiations cannot be successfully concluded with noncomplying recipients of HUD assistance, HUD has generally failed to impose sanctions, i.e., deferral of funds or debarment from HUD programs. When deferrals are used, they are usually short term and funding is frequently resumed before the respondent has agreed to come into compliance.

i. Where negotiations cannot be successfully concluded with non-complying respondents who are not recipients of HUD assistance, HUD's authority under Title VIII only permits it to refer the case to the Department of Justice (DOJ). Despite meetings between HUD and DOJ to improve coordination between the two agencies, HUD has referred few complaints to the Department of Justice.

j. HUD has failed to monitor the compliance agreements it has negotiated and thus it does not know if respondents are complying with the requirements they agreed to implement.

3. At least until the passage of the Housing and Community Development Act of 1974, HUD had neglected the issue of housing discrimination based on sex or marital status. HUD had not conducted studies, collected data, or held hearings for the express purpose of assessing the nature and extent of sex discrimination in housing.

4. HUD has not taken steps to strengthen its affirmative marketing regulations, which require participants in HUD housing programs, including builders and developers and sponsors of HUD subsidized housing, to develop plans demonstrating how properties will be marketed to all racial and ethnic groups.

a. The regulations apply only to housing which will be sponsored or funded by HUD and not to existing housing or to all housing marketed by those who submit plans.

b. Although each plan must set goals for the number of properties marketed to minorities, HUD has issued no guidelines describing how to arrive at these goals.

c. HUD field staff have been given insufficient guidance for monitoring these plans and only a few compliance reviews of the plans have been conducted. HUD thus does not have adequate knowledge of how well the plans are being executed.

d, HUD does not generally provide grants to local fair housing groups to enable them to assist HUD in monitoring the affirmative marketing requirements.

e. HUD has not conducted an evaluation of the impact of these plans on racial and ethnic occupancy patterns nationwide.

5. In March 1973, HUD and the Veterans Administration (VA) agreed to require jointly that management and sales brokers handling HUD- or VA-acquired property certify that they will take positive action to ensure that these properties will be marketed on a nondiscriminatory basis. HUD has been slow in implementing this certification program, a fact which VA has used as an excuse for failing to implement the program.

6. HUD has initiated annual arrangements with municipal governments which would give them priority for HUD funding if they agreed to accomplish certain objectives established by HUD, such as taking measures to promote fair housing. HUD did not include a fair housing component in all of its annual arrangements. Where fair housing components have been included in annual arrangements, they have often been weak.

7. HUD's system for racial and ethnic data collection and use continues to be poor, making it difficult, if not impossible, to determine the extent to which HUD programs are reaching minorities and women.

a. HUD's racial-ethnic data are not generally cross-classified by sex.

b. HUD does not collect racial and ethnic data on private housing, neighborhood compositon, or the population for which HUD's programs are targeted.

c. Equal opportunity field staff rarely utilize the limited data which are available.

8. Despite its mandate in Title VIII provide leadership to Federal agencies in fair housing, HUD has failed to coordinate fair housing activities adequately with other Federal agencies.

a. HUD has agreed to supply the General Services Administration (GSA) with reports concerning housing opportunities, including fair housing, in the vicinity of proposed Federal facilities. The fair housing aspects of these reports have been deficient, however, often failing to include fair housing information.

b. HUD has met with the Federal financial regulatory agencies, but it has failed to take the important step of issuing regulations for ensuring nondiscrimination in mortgage financing.

Chapter 2

FINDINGS AND CONCLUSIONS

Federal Reserve System (FRS)
Federal Deposit Insurance Corporation (FDIC)
Comptroller of the Currency (COC)
Federal Home Loan Bank Board (FHLBB)

1. The Federal financial regulatory agencies are responsible for ensuring that the institutions they oversee are in compliance with applicable Federal laws and regulations. One of the laws applying to banks and savings and loan associations is Title VIII of the Civil Rights Act of 1968, as amended, which provides that it is unlawful for any bank or savings and loan association to deny mortgage assistance because of the applicant's race, color, religion, national origin, or sex.

2. The rules and regulations of the Federal financial regulatory agencies do not adequately address the continuing problem of racial, ethnic, or sex discrimination in the granting of mortgage loans.

a. The FHLBB is the only financial regulatory agency which has issued regulations concerning nondiscrimination based on race, national origin, or color by its regulatees. FRS, FDIC, and COC have merely issued policy statements which are not binding on their regulatees.

b. FRS, FDIC, and COC policy statements merely encourage the institutions they oversee to advertise that they practice nondiscrimination in mortgage lending, whereas FHLBB regulations provide illustrations of nondiscriminatory lending practices and prohibit regulatees from practicing employment discrimination as well as require nondiscrimination in advertising.

c. FHLBB is the only agency with a policy urging its regulatees to refrain from sex discrimination in mortgage lending, but FHLBB has not issued regulations to prohibit such discrimination.

d. None of the four financial regulatory agencies has required its regulatees to develop affirmative action programs regarding the enforcement of Title VIII. 1) The agencies have no requirement for a fair housing officer at each regulated institution. 2) The agencies have not required that builders and developers who receive loans from regulatees file written assurances with those regulatees providing that the dwellings financed will be sold or leased without discrimination. 3) The agencies have not yet required racial-ethnic and sex data collection by all regulatees, although they have effected a pilot program to determine the feasibility of such data collection on a permanent basis.

3. The four agencies have included little assessment of compliance with Title VIII in their bank examinations. Thus, no violations of Title VIII have been identified during such examinations.

a. COC has included no civil rights review in its bank examination process. Its examiners' manual contains no mention of examiners' fair housing responsibilities, nor does it instruct the examiners to check compliance by regulatees with COC's policy statement.

b. FDIC's examiner activities are largely limited to determining if the bank has properly advertised nondiscrimination.

c. Both FRS and FHLBB confine their Title VIII examinations to the use of superficial fair housing questionnaires and have displayed little initiative in uncovering discriminatory practices. 1) Many of the questions call for simple "yes" or "no" responses which make obvious the proper response. 2) Where the responses appear to have indicated discriminatory practices such as refusal to make loans to minorities or in minority areas, both FRS and FHLBB have accepted superficial economic justifications without determining if discrimination occurred.

4. Inadequate fair housing examiner training is provided by the four agencies.

5. Each of the agencies has inadequate complaint handling mechanisms.

a. Although posters required to be on display in the lobbies of banks and savings and loan associations direct complainants to contact HUD, the financial regulatory agencies have not arranged for HUD to notify them of any mortgage finance complaints against their regulatees although HUD has occasionally referred complaints to the agencies on an ad hoc basis. Mortgage finance complaints have been sent directly to FHLBB and FDIC which then attempted to resolve them, but these agencies did not seek assistance or guidance from HUD on the handling of the complaints they received.

b. The responsibility for handling complaints at FHLBB has, until recently, been divided among three Washington offices. In both FDIC and FHLBB, the various offices in the field may also settle complaints without bringing them to the attention of the central office. Staff often lack adequate understanding of complaint investigation and resolution and thus have failed to conduct thorough investigations.

6. The assignment of civil rights responsibilities within the agencies is inadequate.

a. At all agencies, fair housing responsibilities are divided among a number of offices, generally on a part-time basis, except at COC where there are no specific fair housing assignments.

b. In no agency have examiners been assigned permanent fair housing responsibilities.

Chapter 3

FINDINGS AND CONCLUSIONS

Veterans Administration (VA)

1. The Loan Guaranty Service (LGS) in the Department of Veterans Benefits administers programs set up to assist veterans in buying homes.

2. VA is charged by Title VIII of the Civil Rights Act of 1968, as amended, and Executive Order 11063 to ensure that minority veterans are given equal opportunity to purchase homes with VA assistance and that all parties concerned with VA housing programs--builders, developers, home sellers, appraisers, and brokers--deal with minority buyers on a nondiscriminatory basis.

   a. VA does not require a promise of nondiscrimination from the lenders with which it deals.

   b. In August 1974, the Fair Housing Act was amended to prohibit sex discrimination in housing. Prior to that time, VA required its field stations to include both spouses' incomes in calculating veterans' abilities to repay loans, but this requirement is not a sufficiently comprehensive prohibition against sex discrimination in VA's housing programs.

3. Within the VA central office Loan Guaranty Service there is a small equal opportunity staff which is responsible for formulating fair housing policy. This staff has doubled in size since 1973, but continues to lack both a full-time director and sufficient authority to ensure execution of VA housing procedures.

4. Responsibility for implementing VA's equal opportunity policies lies within the loan guaranty divisions of the 50 VA field stations which administer the loan guaranty and direct loan programs and handle the sale of properties acquired by the VA through mortgage foreclosure.

   a. As of April 1974, there were no full- or even part-time equal opportunity staff in any of the VA field stations.

   b. Program staff in the field stations give low priority to their equal housing opportunity responsibilities.

5. As of April 1974, no specific equal opportunity training had ever been given on a formal basis to any of the program staff, either in the central office or in the field. As a result, VA field station personnel were often unfamiliar with the proper procedures for processing discrimination complaints and frequently had no idea how to utilize fair housing data.

6. Since VA receives few complaints, VA staff believes that discrimination is not a serious problem in VA programs.

   a. One reason for the failure of individuals to file complaints with VA is because of the relative anonymity of VA's fair housing effort.

   b. The regional loan guaranty offices visited by Commission staff have made little effort to publicize that the complaints filed will be investigated and resolved.

7. VA's fair housing program relies heavily on certifications, i.e., written promises of nondiscrimination.

   a. VA has failed to ensure that all of its participating management and sales brokers sign the HUD-VA nondiscrimination certification requirement.

b. As of April 1974, VA continued to allow brokers who had not signed certifications to sell VA-owned properties.

8. The most serious deficiency in VA's fair housing program is its failure to monitor the compliance certifications it requires. As of April 1974, the central office had not required such monitoring and none of the field stations visited by Commission staff had taken it upon themselves to determine if VA's nondiscrimination requirements were being followed.

9. In August 1972, VA published draft regulations similar to the regulations adopted by HUD for the affirmative marketing of properties by builders and developers who receive VA approval for the development of subdivisions.

a. The draft requirements do not extend to housing in subdivisions which have already received VA approval.

b. VA has inexcusably delayed in issuing final regulations.

c. By failing to follow HUD's example in adopting final regulations, VA has broken off a traditionally cooperative arrangement between HUD and VA for subdivision approval.

10. Although VA's collection of racial and ethnic data, which covers its acquired property, loan guaranty, and direct loan programs, is generally impressive, it still has some deficiencies.

11. There remains an underrepresentation in minority and female participation as fee appraisers, management brokers, and inspectors in the VA housing program.

a. Despite the VA central office's intent that minorities be recruited for those positions, regional efforts to increase the numbers of minorities in these roles are generally insufficient.

b. VA has not urged field stations to recruit women to participate as fee appraisers, inspectors, or brokers.

12. In July 1972, VA first required its field stations to advertise their sales of acquired properties in the minority media. As of mid-1973, however, compliance with the advertising requirement was uneven.

FINDINGS AND CONCLUSIONS

General Services Administration (GSA)

1. The General Services Administration is the agency responsible for the acquisition, through construction, purchase, or lease, of space for Federal facilities. As the Federal Government's real estate agent, GSA has a unique opportunity for ensuring fair housing in communities surrounding Federal agencies.

2. Executive Order 11512, which sets forth GSA's space acquisition responsibilities, contains several factors of particular interest to minorities and women. GSA, when acquiring and assigning space, must consider the availability of adequate low- and moderate-income housing, accessibility to the site from other areas of the urban center, and the adequacy of parking. It is also required to locate the facilities in a manner designed to exert positive economic and social influence on the development or redevelopment of the areas where facilities will be located. The Executive order, however, does not contain an explicit provision that GSA consider the extent to which housing is available without discrimination on the basis of race, national origin, religion, or sex.

3. Pursuant to the Executive order, HUD and GSA signed a Memorandum of Understanding in which GSA agreed to solicit HUD advice on the availability of housing without discrimination based on race or national origin in communities under consideration for Federal agency location.

a. Although sex discrimination in housing is a serious problem and is prohibited by law, the Executive order makes no mention of assuring that in any community selected there is no discrimination against women in the financing, sale, or rental of housing.

b. The memorandum surrenders some of GSA's leverage to ensure fair housing by requiring that fair housing be available only for Federal employees. There is no such limitation in Title VIII of the Civil Rights Act of 1968, upon which the memorandum is predicated.

4. GSA procedures for implementing the Memorandum of Understanding, which define HUD and GSA responsibilities in executing the agreement, have several weaknesses:

a. The procedures do not make the presence of fair housing an absolute requirement when locating Federal agencies, making it possible for GSA officials to ignore this factor.

b. The implementing procedures do not require that State and local officials be informed when a survey is made to assess a community's potential for accommodating a Federal facility or when a review is conducted in conjunction with a lease action, and there is no requirement that information in HUD's reports concerning low- and moderate-income and fair housing be made available to the State, the community, fair housing groups, or Federal agencies in order to ensure that uncovered deficiencies can be corrected.

5. GSA's implementation of its fair housing responsibilities has been highly inadequate.

a. In requesting HUD advice, GSA has sometimes merely requested concurrence with its previously formulated position that fair housing is adequate. Moreover, GSA has often failed to ask HUD for any advice concerning fair housing in communities under consideration for Federal space.

b. HUD's reports have generally been poor, often only providing limited information, and thus ignoring the requirements of the memorandum. GSA has willingly accepted the reports, generally not indicating any disapproval of them.

c. GSA and HUD have not specifically delineated how nondiscrimination should be measured, failing to state, for example, that HUD should examine fair housing conditions for nonblack minority groups.

6. The memorandum requires that if GSA selects a site which HUD has indicated is inadequate with respect to fair housing, a written affirmative action plan to remedy the situation must be developed by GSA, HUD, the Federal agency involved, and the community in which the installation will be located. This requirement has the following weaknesses:

a. The requirement is vague because the responsibilities of HUD, GSA, the agency involved, and the community have not been clearly defined and mechanisms for remedying inadequacies have not been outlined.

b. The affirmative action requirement does not have to be implemented until 6 months after occupation of the building, which means employees may not be able to relocate with their agencies. Moreover, if the community fails to implement the affirmative action plan, the Federal Government has lost the leverage which could have been used to bring fair housing to the community.

7. GSA continues to lack a full-time director and sufficient staff to oversee its fair housing efforts.

a. No GSA civil rights staff are assigned responsibilities for implementation of the agreement.

b. GSA program staff have received inadequate training concerning the nuances of housing discrimination.

8. The memorandum contains a provision that it will be reviewed 1 year after its issuance and revised to include any provision necessary to improve its effectiveness in light of actual experience. Although 3 years have passed since the memorandum was signed, no review has taken place.

GENERAL RECOMMENDATIONS

1. The President should direct the Secretary of the Department of Housing and Urban Development to make enforcement of fair housing provisions a higher departmental priority in order to accomplish the following major objectives within the next 12 months in that area:

   a. HUD should, within the next year, allocate sufficient resources to conduct at least 50 comprehensive communitywide Title VIII compliance reviews of all major institutions which affect the production, sale, and rental of housing, including State and local governments, housing authorities, builders and developers, real estate brokers, managers, and lenders, and yet not diminish its complaint-handling responsibilities in the fair housing area.

   b. Where housing discrimination is found as a result of these communitywide reviews which cannot be corrected by HUD under its Title VIII authority, it should use all other leverage it has to bring about nondiscrimination in housing including, where appropriate, the termination of financial assistance under Title VI and Executive Order 11063.

   c. HUD should make the submission of an affirmative plan for widening housing opportunities for minorities, women, and persons of low income an absolute requirement for participation in its housing activities, including funding, subdivision approval, and mortgage insurance. Before approving any application, HUD should review and approve all such plans.

2. The fair housing responsibilities of the Federal Government should be restructured. The Veterans Administration, the General Services Administration, the financial regulatory agencies, and all other agencies, with fair housing responsibilities should draft comprehensive regulations detailing the duties of those affected by their programs and activities, including State and local governments, lenders, builders, developers, and real estate brokers. These draft regulations should be subject to approval by HUD. When the regulations are issued, the agencies should delegate their implementation to HUD. Thus, HUD would conduct compliance reviews for these agencies, process complaints, conduct studies, hold hearings, and collect and analyze data on race and ethnic origin cross-tabulated by sex. The agencies would retain the duty to conduct all of their programs in a manner to affirmatively further the purposes of fair housing, and impose sanctions in the event that they are informed of noncompliance with their regulations by HUD. The agencies would be obligated to cooperate with HUD in executing the responsibilities they delegate, reimbursing HUD for the costs of implementing the regulations and lending HUD staff when necessary.

3. Congress should amend Title VIII of the Civil Rights Act of 1968 to authorize HUD to issue cease and desist orders to eliminate discriminatory housing practices.

Chapter 1

RECOMMENDATIONS

Department of Housing and Urban Development (HUD)

1. In order to strengthen HUD's program to combat discrimination in housing, the following steps should be taken:

a. HUD should make compliance reviews the core of its compliance program.

b. HUD should embark promptly on a systematic program of Title VIII communitywide pattern and practice reviews to be undertaken in all major metropolitan areas in the Nation and in a sample of smaller cities, suburbs, and rural counties. Beyond the goal for 50 reviews to be set by the President, yearly goals for the number of reviews to be conducted should be set for each HUD regional office. Detailed guidelines for the conduct of these reviews should be drafted.

c. HUD should conduct thorough Title VI compliance reviews of a representative percentage of the participants in its programs annually. HUD should develop a formula for determining this percentage based on the number and types of recipients and the funding they receive.

d. HUD should take steps to inform persons of Spanish speaking background, Native Americans, and Asian Americans of their rights to fair housing and of how to file housing discrimination complaints. Informational materials in Chinese, Japanese, and some Native American languages should be prepared and widely disseminated. HUD should increase its use and circulation of Spanish language materials.

e. HUD should continue to increase the efficiency of its complaint-handling system to decrease delays and permanently eliminate any backlog.

f. HUD should renew its request to Congress to provide funds to State and local agencies for handling complaints it refers. HUD should enforce its requirement to recall all of those complaints which are not handled by State and local agencies in a timely manner. Where repeated recalls are necessary, HUD should rescind substantial equivalency status.

g. HUD should not permit negotiations for compliance to continue beyond 90 days after a finding of noncompliance.

h. HUD should defer new funds until compliance is achieved from all applicants who are not in compliance with Title VI. In all instances in which negotiations with a recipient are unsuccessful, HUD should initiate fund termination or refer the matter to the Department of Justice with a recommendation that a lawsuit be filed.

i. Until stronger powers are given to enforce Title VIII, HUD should refer to the Department of Justice all Title VIII cases in which an agreement for compliance acceptable to HUD cannot be obtained.

j. HUD should establish a viable program for regularly monitoring the compliance agreements it has negotiated under Title VIII and Title VI.

2. HUD should hold hearings, conduct studies, and gather data to assess the type and extent of sex-based housing discrimination. It should initiate efforts to inform the public that sex-based discrimination in housing is illegal. It should draft regulations indicating what actions are prohibited and how HUD intends to implement the recently enacted law banning sex discrimination in housing.

3. HUD should strengthen its affirmative fair housing marketing regulations.

    a. The regulations should be revised so that they cover all existing housing funded or approved by HUD and all housing marketed by those who submit affirmative marketing plans.

    b. HUD should issue guidelines for setting goals for the number of properties to be marketed to minorities. These guidelines should assist in identifying the population to whom homes will be sold and in assessing the racial-ethnic characteristics of that population.

    c. HUD should establish in all field offices a program for the monitoring of these plans. More staff must be allocated for monitoring and they must be given sufficient guidance for the task.

    d. HUD should provide grants to local fair housing groups so that they may assist it in monitoring affirmative marketing plans.

    e. HUD should conduct a nationwide evaluation of the impact of the affirmative marketing plans on racial and ethnic occupancy patterns.

4. HUD should begin implementing the joint HUD and VA certification agreement. It should provide relevant training to its field staff, and it should meet with VA to ensure bilateral enforcement of the certifications.

5. HUD should use annual arrangements, namely promises by local governments to meet HUD requirements in exchange for HUD funding, as leverage to commit local governments to undertake widespread affirmative action to open up equal housing opportunities in the participating cities.

   a. Equal opportunity staff should always be included as members of the team negotiating annual arrangements.

   b. All annual arrangements should include a fair housing component.

   c. HUD should establish a formal system for conducting compliance reviews of the annual arrangements.

6. HUD should make the following improvements in its system of racial and ethnic data collection:

   a. It should cross-classify its racial-ethnic data according to sex.

   b. It should collect racial and ethnic data on private housing, neighborhood composition, and the population for which HUD's programs are targeted.

   c. HUD should require its equal opportunity staff to use the data it collects.

7. HUD should establish a stronger program of cooperation and coordination with other Federal agencies including the General Services Administration, the Veterans Administration, the financial regulatory

agencies, and the Department of Justice.

a. It should always provide the information required by the HUD-GSA Memorandum of Understanding.

b. HUD should issue regulations requiring nondiscrimination in mortgage financing.

Chapter 2

RECOMMENDATIONS

Federal Reserve System (FRS)
Federal Deposit Insurance Corporation (FDIC)
Comptroller of the Currency (COC)
Federal Home Loan Bank Board (FHLBB)

1. The agencies should promulgate comprehensive regulations to assure nondiscrimination by their regulatees. The regulations should make clear that the regulatees are responsible for remedying any discrimination which occurs and that failure to do so will result in the imposition of sanctions.

    a. FRS, FDIC, and COC should publish equal opportunity regulations which, at a minimum, include all provisions of the FHLBB regulations.

    b. All agencies should include in their regulations a prohibition of discrimination in mortgage finance based on sex, with a detailed listing of the discriminatory acts prohibited.

    c. These regulations should require that a fair housing officer be named in each regulated institution.

    d. The regulations should require collection and analysis of racial-ethnic and sex data on all applicants. Data should also be collected anonymously on those who seek loans informally. Racial-ethnic and sex data should be correlated with information on the acceptance or denial of loan applications; the reasons for any denials; the incomes of the applicant and spouse, as well as any supplementary income, such as from a second job or overtime; the amount of the loan being sought; and the cost of the dwelling for which it is being sought.

e. These regulations should call for a written affirmative action program to be maintained by each regulatee indicating how its fair housing responsibilities will be executed. These plans should be submitted upon request to the regulatory agencies and should be available for review by the public.

2. All four agencies should require regular examination of the fair housing activities of their regulatees. The examinations should be indepth, onsite investigations. The examiners should review the content and implementation of any affirmative action plans and should review all racial and ethnic data available to determine if the regulatees are engaging in such practices as refusing to make loans to minorities in all geographic areas or certain specific geographic areas, refusing to make loans to nonminorities in predominantly minority areas, blockbusting or providing financial support to real estate agents who engage in blockbusting, and using discriminatory criteria in assessing creditworthiness. A report of such examinations should be submitted to top level agency officials for review.

3. An examiner training course such as the one held by FHLBB in the summer of 1972 should be conducted for all examiners in the four agencies. Refresher courses should be offered annually to cover any changes in laws and regulations and periodic repetition of the entire course should be made for newly hired examiners.

4. Handling of Title VIII complaints by the agencies should be drastically improved.

a. The agencies should jointly develop a plan of coordinated complaint handling with HUD. Each agency should obtain from HUD a copy of any complaint HUD receives against one of the agency's regulatees.

b. At the central office level complaints should be handled by only one unit in each agency, and all staff handling complaints should be provided with training to enable them to fulfill their responsibilities.

c. Reports of all complaint settlements in the field should be sent to Washington. These should be reviewed by a designated unit within each agency, and examiners should be directed to reopen their investigation if a complaint is not handled adequately.

5. Each agency should appoint a full-time fair housing director assisted by an adequate professional staff.

a. The responsibilities for writing guidelines for the enforcement of Title VIII regulations, developing a fair housing manual and training program for examiners, reviewing selected examination reports with respect to fair housing, participating in the examination of selected banks and savings and loan associations, and reviewing complaint investigations made by their agencies, including their regional offices, should all be concentrated in this office. This office would also review a sample of fair housing programs maintained by the regulatees.

b. Certain examiners should be given permanent assignments for conducting equal opportunity investigations of the regulatees.

Chapter 3

RECOMMENDATIONS

Veterans Administration (VA)

1. VA should pursue more vigorously its legal and moral obligations in the area of fair housing.

   a. VA should require a promise from the lenders with which it deals that they will not discriminate on the basis of race, ethnic origin, or sex in their mortgage lending practices and should stipulate that these lenders do not lend money to builders and developers who discriminate.

   b. VA should issue guidelines for its field stations and for builders, developers, brokers, lenders, and other participants in its programs requiring the total elimination of sex discrimination in its housing programs.

2. Equal opportunity staff of the VA central office Loan Guaranty Service should be headed by a full-time director who has sufficient authority to ensure execution of VA housing procedures.

3. The 50 VA field stations should include persons with at least regular part-time equal opportunity responsibilities, and VA must take steps to ensure that its equal housing opportunity requirements are being adequately implemented by its field staff.

4. Program staff in both the central office and the field stations should be given specific fair housing training to familiarize them with the proper procedures for ensuring equal housing opportunities.

5. VA should make certain that minorities and women affected by VA programs are informed of its fair housing responsibilities and know how and where to file a complaint of discrimination.

6. VA must ensure that all of its participating management and sales brokers sign the HUD-VA nondiscrimination certification requirement, and VA should not allow brokers who have not signed the certification to sell VA-owned property.

7. VA should conduct civil rights reviews of the activities of builders, developers, lenders, fee appraisers, and brokers in order to determine if there is discrimination by participants in VA programs.

8. VA should issue promptly its affirmative marketing regulations.

    a. These regulations should include an extension of the proposed affirmative marketing regulations to cover housing in subdivisions which already have VA approval.

    b. VA should reestablish a cooperative arrangement with HUD for subdivision approval.

9. VA should take steps to further upgrade its system of data collection and use.

    a. VA should implement as soon as possible its plans for expanding its data system to enable correlation between race and ethnic characteristics and other factors such as downpayment size and time lapse between loan application and approval.

b. VA should collect data on spouse income and should cross-tabulate by sex its racial and ethnic data on participation in its loan program in order to assess the discrimination facing women of all racial-ethnic groups.

10. The Washington office should take firm steps to require the loan guaranty divisions to increase minority and female participation as fee appraisers, brokers, and inspectors in the sale and management of VA-acquired property.

11. VA should ensure that all field stations fully execute VA's requirement to advertise the sale of VA-acquired properties in the minority media. If sales of these properties continue to perpetuate existing patterns of segregation, VA should conduct a study to determine if this is due to factors within its control.

Chapter 4

RECOMMENDATIONS

General Services Administration (GSA)

1. A revised Executive order should be issued which would require that Federal agencies relocate in communities which are free from housing discrimination based on race, national origin, religion, and sex.

2. The HUD-GSA Memorandum of Understanding should be revised:

   a. It should be extended to include nondiscrimination in housing based on sex.

   b. It should cover all housing in the communities affected, not merely housing for Federal employees.

3. GSA's implementing procedures should be revised to reflect the following factors:

   a. No Federal agency should be allowed to locate in a community which does not assure open housing.

   b. State and local officials and fair housing groups should always be informed when any type of investigation is conducted and the findings should always be made available to them.

4. GSA needs to strengthen its implementation of its fair housing responsibilities:

   a. GSA should specifically ask HUD's advice on the status of fair housing in all communities under consideration for Federal space.

   b. GSA should reject all HUD's reports which fail to include information mandated by the memorandum and should request that the information be provided.

c. GSA and HUD should agree on the details of how HUD should conduct the fair housing investigation. The investigation should reflect concern with housing opportunities for women and all minority groups, including persons of Spanish speaking background, Asian Americans, Native Americans, and blacks. At a minimum, HUD's investigation should include: 1) testing of all new and existing rental and sale housing, 2) a comprehensive review of the operation of all HUD programs to see if the locality is complying with HUD equal opportunity requirements, 3) consultation with community groups engaged in fair housing activities in the area, 4) a public hearing on the quantity and quality of housing available on a nondiscriminatory basis, 5) a review of the municipality's fair housing activities, and 6) a review of local banking practices.

5. The affirmative action plan requirement needs to be strengthened in the following ways:

a. The responsibilities of HUD, GSA, the agency involved, and the community for drafting and monitoring the plan should be clearly defined in written guidelines.

b. Implementation of the affirmative action plan should be required prior to the occupation of the building.

6. GSA should appoint a full-time, senior-grade official to oversee the execution of its fair housing responsibilities.

a. This official should be provided with adequate fair housing staff.

b. GSA should initiate fair housing training for all staff with responsibilities in connection with Executive Order 11512.

7. GSA should conduct an immediate evaluation of the Memorandum of Understanding the implementing procedures, and their execution, to gauge their weaknesses and determine how best to correct them.